IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

J. B. HALL and LIBBY A. HALL,)
)
Plaintiffs,)
)
v.) No. 83-C-178-B
)
GROUP HOSPITAL SERVICE d/b/a)
BLUE CROSS BLUE SHIELD OF)
OKLAHOMA, an Oklahoma insur-)
ance corporation, et al.,)
)
Defendants.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This case came on for trial to the Court sitting without a jury on July 13, 14 and 15, 1987. The Plaintiffs commenced this action under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq. ("ERISA"), for damages arising out of payment of pension/ retirement benefits. The Plaintiffs claim they suffered monetary damage caused by Defendants' delay in honoring their request for a lump sum distribution of Plaintiff J. B. Hall's retirement benefits and also for Defendants' failure to furnish a true and correct copy of the Plan. After considering the evidence, arguments of counsel, and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff J. B. Hall is a retired former employee of the Defendant Group Hospital Service, d/b/a Blue Cross, Blue

Shield of Oklahoma ("Blue Cross Blue Shield"), with its principal place of business in Tulsa, Oklahoma.

2. Plaintiff J. B. Hall is a participant in the Minnesota Mutual Life Insurance Company Defined Benefit Pension Plan Pattern Plan-DA.

3. Defendant Blue Cross Blue Shield is an Oklahoma corporation formed for the purpose of operating a nonprofit hospital service and medical service or indemnity plan in the State of Oklahoma with its principal place of business in the City of Tulsa, State of Oklahoma.

4. Defendant Blue Cross Blue Shield adopted the Minnesota Mutual Life Insurance Company Defined Benefit Pension Plan Pattern Plan - DA as its Pension Plan ("Pension Plan").

5. Plaintiff Libby A. Hall is a beneficiary of the Pension Plan, as said term is defined in 29 U.S.C. §1002(8) of ERISA.

6. Defendant Blue Cross Blue Shield is an employer as said term is defined under ERISA.

7. Plaintiffs J. B. Hall and Libby A. Hall are husband and wife and residents of Tulsa County, State of Oklahoma.

8. Defendant Blue Cross Blue Shield is Plan Administrator and Plan Sponsor of the Pension Plan.

9. Ralph S. Rhoades ("Rhoades") was President of Defendant Blue Cross Blue Shield at all material times herein and acted as a fiduciary to the Pension Plan.

10. At the time of his retirement, Plaintiff J. B. Hall's accrued benefit, a joint and 100% Survivor Annuity, under the Pension Plan had vested.

11. Defendant Blue Cross Blue Shield is Plan Administrator and Plan Sponsor of an employee pension benefit plan known as the Pension Plan, as said terms are used in ERISA.

12. On October 4, 1981, the Board of Trustees of Defendant Blue Cross Blue Shield adopted a job description for the Chief Executive Officer (Rhoades), which contained, inter alia, the following: "However, without specific Board approval, he may not: ...[E]stablish or amend any retirement or deferred compensation program affecting exempt employees." J. B. Hall is an exempt employee.

13. On October 29, 1981, Group Hospital Service President Rhoades, without Board of Director approval, executed the fourth amendment to the Plan, effective October 15, which had the effect of deleting the lump sum option from the Blue Cross Blue Shield Pension Plan.

14. The form of the fourth amendment was prepared by Minnesota Mutual upon a request from Bob Jarvis, Vice President of Human Resources ("Jarvis"), dated October 9, 1981.

15. On April 30, 1982, Plaintiff J. B. Hall advised President Rhoades, in writing, that he would retire from employment early, effective August 1, 1982.

16. Plaintiff J. B. Hall did not read the Pension Plan, nor any part of it, prior to announcing his retirement on April 30, 1982.

17. Plaintiff J. B. Hall was aware of the amendment to the Pension Plan deleting the lump sum option, and of the existence

of the President's 1981 job description prior to announcing his retirement.

18. Plaintiff J. B. Hall was entitled to and did retire early as an employee of Defendant Blue Cross Blue Shield effective August 1, 1982, the first day after the month in which he turned sixty (60).

19. The Pension Plan provides that benefits payable under the Pension Plan will "... commence no later than sixty (60) days after the Participant's Normal Retirement Date."

20. Under the Pension Plan, the Normal Retirement Date is the first day of the month after the employee reaches age 65.

21. The Third Amendment to the Plan affecting §4.8, requiring the Plan Sponsor to provide information to participants nine months prior to their retirement date, could not apply to early retirees since the Plan Sponsor would be unable to predict the date upon which early retirees would choose to retire.

22. Under the Pension Plan, Plaintiff J. B. Hall's accrued benefit was a Joint and Survivor 100% Annuity.

23. The Pension Plan makes no specific provision for the time period for payment of early retirement benefits as involved herein.

24. Plaintiff J. B. Hall gave written notices to Rhoades on or about July 8, 1982, wherein he requested that he be given a special exception to provide him the option to receive from the Pension Plan a lump sum cash distribution.

25. By letter dated July 8, 1982, Plaintiff J. B. Hall requested that no payment be made under an option until a final determination is made concerning a lump sum settlement.

26. Rhoades was on vacation and otherwise unavailable until July 23, 1982, to meet with Plaintiff J. B. Hall.

27. Plaintiff J. B. Hall and Rhoades met on July 23, 1982, upon Rhoades' receipt of a memo that date from Plaintiff J. B. Hall, to discuss Plaintiff's request for a lump sum option.

28. At that July 23rd meeting, Plaintiff J. B. Hall informed Rhoades that he believed the amendment to the Pension Plan deleting the lump sum option was invalid due to the 1981 Board of Director approved job description which stated that the president was without authority to make such amendment.

29. Plaintiff J. B. Hall was advised by Rhoades on the 9th day of August, 1982, following his retirement, that the Board of Trustees had voted to affirm and/or ratify the amendment deleting the lump sum and that Plaintiff J. B. Hall could not, therefore, select a lump sum option under the Pension Plan.

30. Plaintiff J. B. Hall, on August 9, 1982, requested in writing that the Company reconsider providing him the option of a lump sum distribution after the denial by Rhoades.

31. On September 20, 1982, Plaintiffs' lawyer, Stephen L. Andrew, and Defendant Blue Cross Blue Shield's general counsel, Thomas Gudgel ("Gudgel"), reached an agreement to permit Plaintiff J. B. Hall to have the lump sum option. At that time neither party knew the specific dollar amount of the lump sum.

32. On or about October 13, 1982, Jarvis, responsible for the day-to-day administration of the Pension Plan, received from the enrolled actuary a revised income option selection form containing the lump sum option for Plaintiff J. B. Hall in the amount of $145,087.31.

33. On several occasions in the past, Plaintiff J. B. Hall had received projected retirement benefits which were labeled as estimates; one in 1980 reflecting the sum of $154,043.14. (Plaintiffs' Exhibit 5).

34. Upon receipt of such selection form, Plaintiff J. B. Hall disputed the correctness of the lump sum amount, essentially because of the prior estimate and personal approximate computations by Hall.

35. On October 15, 1982, Jarvis, by telephone, questioned Mary Kinney of Minnesota Mutual Life regarding the method that the Company used to calculate the lump sum.

36. On October 26, 1982, after receipt of a letter confirming the conversation of October 15th, Jarvis wrote Plaintiff J. B. Hall explaining that a change in actuarial assumptions caused the lump sum to be lower than the 1980 estimate.

37. On November 3, 1982, Jarvis, upon demand made to Defendant by Plaintiffs' counsel, requested detailed calculations of the lump sum formula for Plaintiffs' attorney.

38. On November 8, 1982, Michael Rahn, an actuary with Minnesota Mutual Life Insurance Co., and the enrolled actuary for

the Pension Plan, in a letter to Jarvis, explained the formula and the actuarial valuations used to calculate the lump sum.

39. The enrolled actuary for the Plan, Jenean Cardon, was charged with the responsibility for making the actuarial valuations for the Plan pursuant to the actuarial designation. The Plan Sponsor delegated the responsibility for calculating benefits to Minnesota Mutual and never calculated benefits itself.

40. Minnesota Mutual reasonably interpreted the language in the Plan at 2.26, "most recent actuarial valuation in effect..." to mean the actuarial valuation which was in effect for the May 1, 1982 Plan Year in the case of any retirement occurring after May 1, 1982 and before April 30, 1983.

41. On November 24, 1982, Plaintiff J. B. Hall and his attorney met with Blue Cross Blue Shield personnel and attorneys in an effort to resolve their differences regarding the lump sum and delay in payment.

42. On November 29, 1982, Plaintiffs' attorney, by letter to Blue Cross in-house counsel Gudgel, advised Defendant Blue Cross Blue Shield that the delay in payment of the lump sum after August 1, 1982, precluded Plaintiff J. B. Hall from investing in an "I.R.A. Roll Over Account...guaranteeing an interest rate on the invested amount of 15.39%," and instead he would be forced to invest in an account, "... paying a guaranteed interest rate of 12.5%." (Defendants' Exhibit AH).

43. Approximately December 2, 1982, Plaintiffs' attorney sent a letter to Defendant Blue Cross Blue Shield which indicated that Plaintiff J. B. Hall would elect to take the $145,087.31 lump sum, '... without waiving any rights Mr. Hall may have to any additional amounts which are due him as a result of the Plan's failure to distribute to Mr. Hall, in a timely fashion, a lump sum cash payment on August 1, 1982." (Plaintiffs' Exhibit 17).

44. Plaintiff J. B. Hall did receive a check representing the lump sum cash settlement of $145,087.31, from the Pension Plan on or about December 22, 1982.

45. Sixty (60) days from August 1, 1982, that is, prior to October 1, 1982, would be a reasonable time for Defendants to make or to have tendered the lump sum payment. Any delay beyond October 1, 1982, was not the fault of Plaintiffs. Delay was due essentilly to Defendants' failure initially to honor Plaintiffs' lump sum option request.

46. No Merrill-Lynch I.R.A. Rollover Account paid a guaranteed interest rate, contrary to the assertions in the letter from Plaintiff's attorney dated November 29, 1982. Plaintiff was either misled or misinterpreted what the Merrill-Lynch broker said in this regard.

47. Under the Pension Plan in 1982, a defined benefit plan, the Normal Annuity Form, as set out at §4.6, was a Joint and Survivor Annuity, in the amount of $1,413.95 per month, the "Joint Life and Surviving Spouse" benefit. Any other form of

payment of the benefit was an Optional Retirement Annuity, according to §4.7 of the Plan.

48. Plaintiff J. B. Hall's Vested Interest under the Plan at §5.1 was in his Accrued Benefit, the Normal Retirement Annuity.

49. Under the Pension Plan, at §4.7, any optional method of payment, "... shall be the actuarial equivalent of the amount of monthly retirement annuity payable under the Normal Annuity Form," which was the Five Year Certain and Life annuity, $1,767.10 per month. Due to Plaintiff J. B. Hall's marital status, a Joint Life and Surviving Spouse annuity of $1,413.95 per month was an automatic payment unless otherwise deposited.

50. The lump sum is computed by determining the Present Value of the Accrued Benefit, according to §2.26 of the Pension Plan, and is defined therein to mean, "... the lump sum single premium that would be required, on any given date, to provide a Participant with his Accrued Benefit, in accordance with the assumptions used in the most recent actuarial valuation."

51. In determining Plaintiff J. B. Hall's lump sum, the enrolled actuary used, as one actuarial valuation, a 7.5% interest rate for investment of the lump sum, and also used Plaintiff J. B. Hall's latest salary, both of which were factors considered by the actuary only for payouts to be made after May 1, 1982.

52. The actuarial assumption regarding the interest rate was comparable to the assumption made by the enrolled actuary for other plans for which she was the enrolled actuary in 1982.

53. The copy of the Pension Plan given to Plaintiff J. B. Hall in June, 1982 was not a full and complete copy in that it did not include a March 2, 1979 amendment made by Minnesota Mutual Life Insurance Co. to subsection 4.8 of the Pension Plan.

54. Plaintiffs were not prejudiced by Jarvis' unintentional and inadvertent failure to include a copy of the third amendment to the Pension Plan in the copy of the Pension Plan provided Plaintiffs on June 3, 1982, and no penalty or damage award should attach pursuant to 29 U.S.C. §1132(c).

55. Plaintiff J. B. Hall was aware that the November 1980 pension projections were only estimates subject to change.

56. Plaintiff J. B. Hall's lump sum benefit was calculated in accordance with the terms of the Pension Plan, and was made by the actuary in good faith, based upon reasonable assumptions.

57. Plaintiffs may not recover for a speculative lost investment opportunity in Corporate Income Fund #151 and subsequently speculative reinvestments of capital returns.

58. There was no accord and satisfaction reached by the parties herein.

59. The Plaintiffs are entitled to recover the sum of $2,444.62, which is calculated by determining 7.5% per annum on $145,087.31, from October 1, 1982 to December 22, 1982. Plaintiffs are also entitled to prejudgment interest thereon at 7.5% per annum from December 22, 1982 to the date of judgment, which is $860.47. Therefore, the total sum is $3,305.09.

CONCLUSIONS OF LAW

1. This action is properly brought under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et seq. ("ERISA").

2. Jurisdiction properly lies in this Court pursuant to Section 502(a), 29 U.S.C. §1132(a), and venue is properly found within the Northern District of Oklahoma.

3. Any Finding of Fact above which might be properly characterized a Conclusion of Law is incorporated herein.

4. The Minnesota Mutual Life Insurance Company Defined Benefit Pension Plan Pattern Plan - DA is an "employee welfare benefit plan" which is covered by ERISA.

5. Rhoades was acting as a fiduciary with respect to Plaintiff J. B. Hall. 29 U.S.C. §1103; 29 C.F.R. §2509.75-8.

6. Decisions of the trustees of pension plans are disturbed only if they are arbitrary and capricious. Denton v. First National Bank of Waco, 765 F.2d 1295 (5th Cir. 1985). The district court sits in the role of an appellate tribunal, not to make a de novo review. Peckham v. Board of Trustees, International Brotherhood of Printers, 653 F.2d 424 (10th Cir. 1982).

7. It was arbitrary and capricious for Defendants to take time beyond October 1, 1982 to determine the amount of lump sum benefits due Plaintiffs and make payment thereof.

8. A contracting party is not liable for losses he did not have reason to foresee at the time of contracting. Restatement of Contracts 2d § 351; 22 Am.Jur.2d §61.

9. Pre-judgment interest may be allowed where a beneficiary was wrongfully denied his pension benefits. It is within this Court's discretion to award such pre-judgment interest. American Timber & Trading v. First National Bank of Oregon, 690 F.2d 781 (9th Cir. 1982); Dependahl v. Falstaff Brewing Co., 653 F.2d 1208 (8th Cir. 1981), cert. denied, 454 U.S. 968 (1981); Donovan v. Carlough, 581 F.Supp. 271 (D.C. 1984); Katsaros v. Cody, 744 F.2d 270 (2nd Cir. 1984); Nedd v. United Mine Workers of America, 488 F.Supp. 1209 (M.D.Pa. 1980), aff'd, 726 F.2d 972 (3rd Cir. 1984).

10. The question of the rate of interest is a question of federal law. Dependahl, supra.

11. The scope of this Court's review is limited to whether the Plan Administrator, or its designee, was arbitrary and capricious in (i) initially denying the lump sum, (ii) determining whether it should be paid and in (iii) determining the acturial assumption was arbitrary and capricious. Miles v. N.Y. St. Teamsters Conference Pension and Retirement Fund Employee Benefit Plan, 698 F.2d 593, 601 (2d Cir. 1983), cert. denied, 104 S.Ct. 105 (1983).

12. The actuarial valuations to be used in determining the lump sum as an actuarial equivalent of Plaintiff J. B. Hall's monthly annuity are the valuations as of the date of distribution. 29 C.F.R. §2619.26()(1) (1984).

13. Defendant Blue Cross Blue Shield will not be assessed a penalty of any amount due to the failure of Jarvis to include

Amendment Three to the Plan in the copy provided Plaintiff J. B. Hall on June 3, 1982, since it was done inadvertently and Plaintiffs were not prejudiced thereby. Pollock v. Castrovinci, 476 F.Supp. 606 (S.D.N.Y. 1979); aff'd 622 F.2d 575 (2d Cir. 1980); Kann v. Keystone Resources, Inc. Profit Sharing Plan, 575 F.Supp. 1084 (W.D.Pa. 1983).

14. Rhoades was without authority to execute the amendment to the Pension Plan deleting the lump sum benefit option after the adoption of the 1981 job description.

15. Defendant Blue Cross Blue Shield was arbitrary and capricious in initially denying Plaintiffs' demand for a lump sum based upon the amendment, as the amendment had not had Board of Director approval at the time Plaintiffs exercised their lump sum option. 29 U.S.C. §1109; 29 U.S.C. §1132.

16. Defendant Blue Cross Blue Shield was not arbitrary and capricious in accepting the actuary's determination of the present value of Plaintiff's accrued benefit. 29 U.S.C. §1109.

A separate Judgment in accordance with these Findings of Fact and Conclusions of Law is entered this date in favor of Plaintiffs and against the Defendants.

DATED this 31st day of August, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

J. B. HALL and LIBBY A. HALL,)
)
Plaintiffs,)
)
v.) No. 83-C-178-B
)
GROUP HOSPITAL SERVICE, d/b/a)
BLUE CROSS BLUE SHIELD OF)
OKLAHOMA, an Oklahoma insur-)
ance corporation, et al.,)
)
Defendants.)

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Plaintiffs, J. B. Hall and Libby A. Hall, and against the Defendant Group Hospital Service d/b/a Blue Cross Blue Shield of Oklahoma, in the amount of Three Thousand Three Hundred Five and 09/100 Dollars ($3,305.09), with interest thereon at the rate of 6.98% per annum from the date hereon; plus the costs of this action if timely applied for pursuant to Local Rule. Likewise, any claim for attorney fees entitlement must be timely filed pursuant to Local Rule.

DATED this 31st day of August, 1987.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

J. B. HALL and LIBBY A. HALL, Plaintiffs,	)	
v.	)	No. 83-C-178-B
GROUP HOSPITAL SERVICE, d/b/a BLUE CROSS BLUE SHIELD OF OKLAHOMA, an Oklahoma insurance corporation, et al., Defendants.	)	

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Plaintiffs, J. B. Hall and Libby A. Hall, and against the Defendant Group Hospital Service d/b/a Blue Cross Blue Shield of Oklahoma, in the amount of Three Thousand Three Hundred Five and 09/100 Dollars ($3,305.09), with interest thereon at the rate of 6.98% per annum from the date hereon; plus the costs of this action if timely applied for pursuant to Local Rule. Likewise, any claim for attorney fees entitlement must be timely filed pursuant to Local Rule.

DATED this 31st day of August, 1987.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 31 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
KENNETH R. RUSSELL,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 86-C-898-E

ORDER OF DISMISSAL

Now on this 31 day of August, 1987, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Kenneth R. Russell, be and is dismissed without prejudice.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE BOARD OF TRUSTEES OF THE PIPELINE INDUSTRY BENEFIT FUND,

Plaintiff,

vs.

D. R. FITZMAURICE CONTRACTORS INC.,

Defendant.

No. 86-C-590-E

JUDGMENT

The Defendant having failed to obtain counsel on or before June 22, 1987 as previously ordered by this Court, and the Court having previously indicated that such failure would constitute confession of the default judgment sought by Plaintiff, it is hereby ordered that judgment be entered in favor of the Plaintiff, the Board of Trustees of the Pipeline Industry Benefit Fund, against the Defendant, D. R. Fitzmaurice Contractors, Inc., in the amount of $16,390.64, plus interest at the rate of 6.98% per annum from date of judgment

DATED this 31st day of August, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES R. MILLS,

Plaintiff,

vs.

OTIS R. BOWEN, Secretary of Health and Human Services,

Defendant.

No. 85-C-291-E

ORDER

The government having moved to remand this matter to the Secretary of Health and Human Services and no opposition having been shown by the Plaintiff, James R. Mills, the matter is hereby remanded to the Secretary of Health and Human Services for further proceedings.

DATED this 31st day of August, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 31 1987

Silver, Clerk
U.S. DISTRICT COURT

CARROLL F. POTTER,

Plaintiff,

vs.

GENERAL AMERICAN LIFE INSURANCE COMPANY,

Defendant.

Case No. 85-C-545-E

ORDER OF DISMISSAL WITH PREJUDICE

CARROLL F. POTTER, Plaintiff herein, and GENERAL AMERICAN LIFE INSURANCE COMPANY, Defendant herein, having resolved the differences between them and entered into a Joint Motion for Dismissal herein, and the Court having considered said Joint Motion and determined that the same should be granted,

IT IS THEREFORE ORDERED, that the above styled and numbered cause of action is hereby dismissed on the merits and with prejudice, and that each party shall bear its own costs incurred herein.

Signed this 31st day of August, 1987.

S/ JAMES O. ELLISON

U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES SMITH,

Plaintiff,

vs.

VAR, INC., d/b/a COLORTYME RENTALS,

Defendant.

No. 87-C-299-E

ORDER

There being no objection to the Plaintiff's Motion to Dismiss Defendant's Counterclaim and more than ten (10) days having passed since the filing of the motion and no extension of time having been sought by Defendant, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Defendant has therefore waived any objection or opposition to the Plaintiff's Motion to Dismiss Defendant's Counterclaim. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Plaintiff's Motion to Dismiss Defendant's Counterclaim is therefore granted.

ORDERED this 31st day of August, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

16

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY,	)	
Plaintiff,	)	
vs.	)	
BARNETT-RANGE CORPORATION; WOODLAND HILLS/BOULDER RIDGE JOINT VENTURE; BARNETT-RANGE HOLDING COMPANY NO. 1; BARNETT-RANGE PROPERTY SERVICE CORPORATION; AETNA CASUALTY & SURETY COMPANY; and ALL OWNERS d/b/a BOULDER RIDGE APARTMENTS; LINDA HANES and FLOYD HANES,	)	No. 86-C-709-B
Defendants.	)	

FILED

AUG 28 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER DISMISSING CLAIM PRESENTED AGAINST DEFENDANT BARNETT-RANGE CORPORATION WITH PREJUDICE

This cause comes before the Court on Plaintiff's Application for Dismissal of Claim Presented Against Barnett-Range Corporation and the Court, finding that defendant Barnett-Range Corporation has no objection to plaintiff's voluntary dismissal of the claim presented against it in the above-styled case, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, that said defendant has filed no counterclaim against the plaintiff in this action, and that there are no conditions known to said defendant or to the plaintiff to be placed on the dismissal of the claim presented against Barnett-Range Corporation, grants the plaintiff's motion.

IT IS, THEREFORE, ORDERED that the claim presented against Barnett-Range Corporation shall be, and is hereby, dismissed with prejudice to any further action and with no conditions placed thereon.

Dated this 27 day of August, 1987.

S/ THOMAS R. BRETT

~~JAMES O. ELLISON~~ Thomas R. Brett
United States District Judge

COPIES TO:

Joseph A. Sharp, 1500 ParkCentre, 525 S. Main, Tulsa, OK 74103;

Alfred K. Morlan, 3800 First National Tower, Tulsa, OK 74103;

C. Jack Maner, 100 Center Plaza, Suite A, Tulsa, OK 74119;

John H. Tucker, 2800 Fourth National Building, Tulsa, OK 74119;

Richard D. Wagner, P.O. Box 1560, Tulsa, OK 74101-1560

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RALPH SHAFFER, et al.,

Plaintiffs,

-vs-

RHINO INDUSTRIES, INC., et al.,

Defendants,

No. 85-C-992-E

and

C. A. WEAVER, et al.,

Plaintiffs,

-vs-

RHINO INDUSTRIES, INC., et al.,

Defendants.

No. 85-C-1088-E

(Consolidated)

FILED

AUG 27 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

IT IS HEREBY stipulated by all plaintiffs and defendants in the above entitled consolidated actions that the above entitled consolidated actions be dismissed without prejudice.

Dated August 4, 1987.

MITCHELL E. SHAMAS, OBA #8113
Attorney for Plaintiffs
P. O. Box 896
Okmulgee, OK 74447
(918) 756-7715

HOWARD & WIDDOWS, P.C., by H. Gregory Maddux, OBA #
Attorneys for Defendants
2021 S. Lewis, Suite 570
Tulsa, OK 74104
(918) 744-7440

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PEGGY CARR,	)	
	)	
Plaintiff,	)	No. 87-C-39-B
	)	
vs.	)	
	)	
SKAGGS ALPHA BETA, INC., a Delaware corporation,	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Peggy Carr, by her attorney, Russell D. Carson, and the Defendant, Skaggs Alpha Beta, Inc., by its attorney, Jack Y. Goree, and they do hereby advise the Court that all of the issues between the parties have been compromised and settled on a mutually agreeable basis and the case may now be dismissed with prejudice.

It is hereby stipulated by and between the parties that the case is hereby dismissed with prejudice to refiling of same.

PEGGY CARR

By: _____
Russell D. Carson,
Attorney for Plaintiff

SKAGGS ALPHA BETA, INC.

By: _____
Jack Y. Goree,
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MONICA JOHNSON, a minor who sues by and through MARILYN LEE, her mother, as next friend,	)	
Plaintiff,	)	
vs.	)	Civil Case No. 87-C-18-B
INDEPENDENT SCHOOL DISTRICT NO. 2 OF SAND SPRINGS, TULSA COUNTY, OKLAHOMA; OKLAHOMA STATE DEPARTMENT OF EDUCATION,	)	
Defendants.	)	

FILED

AUG 28 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes on for consideration of the parties' Joint Application for Dismissal with Prejudice. Upon consideration thereof, the parties' Joint Application is granted and this action is ordered dismissed with prejudice.

It is further ordered that each of the parties shall bear their own costs and attorney fees associated with this action and all other proceedings below which are the subject of, or led to this action.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID A. BARNES; BRENDA L. BARNES; SHELTER FINANCIAL SERVICES, INC.; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Defendants.

CIVIL ACTION NO. 86-C-921-E

DEFICIENCY JUDGMENT

Now on this 27 day of August, 1987, there came on for hearing the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment herein, said Motion being filed on the 29th day of July, 1987, and a copy of said Motion being mailed to David A. Barnes and Brenda L. Barnes, 14328 South Birch, Glenpool, Oklahoma 74033 and all other counsel of record. The Plaintiff, United States of America, acting on behalf of the Administrator of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendants, David A. Barnes and Brenda L. Barnes, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on January 27, 1987, in favor of the Plaintiff United States of America, and against the Defendants, David A. Barnes and Brenda L. Barnes, with interest and costs to date of sale is $44,526.95.

The Court further finds that the appraised value of the real property at the time of sale was $34,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered January 27, 1987, for the sum of $30,167.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on 22nd day of July, 1987.

The Court further finds that the Plaintiff, United States of America on behalf of the Administrator of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, David A. Barnes and Brenda L. Barnes, as follows:

Principal Balance as of 05/19/87	$38,113.28
Interest	5,593.12
Late Charges	268.04
Appraisal	129.10
Management Broker Fees	180.00
Court Costs	243.41
TOTAL	$44,526.95
Less Credit of Appraised Value	- 34,500.00
DEFICIENCY	$10,026.95

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Administrator of Veterans Affairs have and recover from Defendants, David A. Barnes and Brenda L. Barnes, a deficiency judgment in the amount of $10,026.95, plus interest at the legal rate of 6.98 percent per annum on said deficiency judgment from date of judgment until paid.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
RONALD E. WRIGHT,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 86-C-1023-E

DEFAULT JUDGMENT

This matter comes on for consideration this 27th day of August, 1987, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Ronald E. Wright, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Ronald E. Wright, was served with Complaint and Summons on February 11, 1987. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Ronald E. Wright, for the principal sum of $325.90, plus interest at the rate of 12.25 percent per annum and administrative costs of $.68 per month from April 27, 1984, until judgment, plus interest thereafter at the current legal rate of 6.78 percent per annum until paid, plus costs of this action.

S/ JAMES C. HUDSON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RALPH SHAFFER, et al., Plaintiffs, -vs- RHINO INDUSTRIES, INC., et al., Defendants,	)	No. 85-C-992-E
and		
C. A. WEAVER, et al., Plaintiffs, -vs- RHINO INDUSTRIES, INC., et al., Defendants.	)	No. 85-C-1088-E (Consolidated)

FILED
AUG 27 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION OF DISMISSAL

IT IS HEREBY stipulated by all plaintiffs and defendants in the above entitled consolidated actions that the above entitled consolidated actions be dismissed without prejudice.

Dated August 4, 1987.

MITCHELL E. SHAMAS, OBA #8113
Attorney for Plaintiffs
P. O. Box 896
Okmulgee, OK 74447
(918) 756-7715

HOWARD & WIDDOWS, P.C., by H. Gregory Maddux, OBA #
Attorneys for Defendants
2021 S. Lewis, Suite 570
Tulsa, OK 74104
(918) 744-7440

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

LINDA K. LAU, the Widow of Billy Dale Lau, DAWN R. LAU, an infant of Billy Dale Lau, by and through her mother and next friend, Linda K. Lau, JASON B. LAU, an infant of Billy Dale Lau, by and through his mother and next friend, Linda K. Lau, and THE ESTATE OF BILLY DALE LAU, by and through the widow, Linda K. Lau, Plaintiffs, vs. GEARY W. SHERRILL, DON R. HUGHES d/b/a HUGHES LAND & CATTLE COMPANY, JOHN DOE INSURANCE COMPANY (an underinsured motorist insurer), RICHARD ROE INSURANCE COMPANY (an underinsured motorist insurer), and RONNIE J. SMITH d/b/a THE BARN DOOR, Defendants.	Case No. 87-C-393-E [Wrongful Death]

JUDGMENT BY DEFAULT AGAINST DEFENDANT RONNIE J. SMITH

Defendant, Ronnie J. Smith, d/b/a The Barn Door, has been regularly served with process. He has failed to appear and answer the Plaintiffs' Complaint filed herein. The default of Defendant Smith has been entered. It appears that Defendant Smith is not an infant or incompetent

person or in the military service. It appears from the Affidavit that the Plaintiffs are entitled to judgment.

IT IS ORDERED AND ADJUDGED that Plaintiffs recover from Defendant Ronnie J. Smith d/b/a The Barn Door the sum of $865,531.50 with interest thereon at the rate of 10.03% per annum from the date of judgment until paid, together with costs of this action.

DATED this 27 day of July, 1987

JUDGE OF THE UNITED STATES
DISTRICT COURT

Entered

FILED

AUG 27 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

AETNA INSURANCE COMPANY,

Plaintiff,

vs.

WISE ELECTRIC CO., TRACY REE, LINDA REE, MONTE D. WISE, and DONNA M. WISE,

Defendants.

NO. 87-C-251-E

ORDER GRANTING PARTIAL DEFAULT JUDGMENT

The Court, being fully advised, finds as follows:

1. Plaintiff filed its complaint against Defendants, Wise Electric Co., Tracy Ree, Linda Ree, Monte D. Wise, and Donna M. Wise, on April 8, 1987.

2. On April 13, 1987, the service agent for Defendant, Wise Electric Co., was served with a copy of the Summons and Complaint.

3. Wise Electric Co. has failed to answer or otherwise plead within the time permitted by Rule 12, Fed. R. Civ. P.

4. In its complaint, Plaintiff prayed for judgment against Wise Electric Co. and the other Defendants, jointly and severally, for its losses, some of which were known and accrued, some of which were contingent, and some of which were unknown. Plaintiff attached a summary of its known, accrued and contingent damages as Exhibit "B" to its Complaint. This exhibit shows that $434,873.84 in damages are accrued. Plaintiff is entitled to default judgment in this amount at this time. In further support, Plaintiff has attached as Exhibit "C" to the motion for partial default judgment the affidavit of John A. Mooney, Plaintiff's representative.

5. Plaintiff does not seek a final judgment with respect to all of its claims against Wise Electric Co. at this time. As indicated, some of Plaintiff's expected losses are contingent at this time and will not be suffered until a later date. Further, there may be certain other unknown damages. Plaintiff does not seek judgment with respect to either of its contingent claims or its unknown claims at this time and asks the Court to reserve determination on these matters until a later date.

6. Under Rule 55, Fed. R. Civ. P., Plaintiff is entitled to have partial default judgment entered against Wise Electric Co. by the court clerk.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

Plaintiff's motion for partial default judgment is hereby granted, and partial default judgment is hereby rendered against Wise Electric Co. and in favor of Aetna Insurance Company for the amount of $434,873.84, plus $120.00 in costs, said judgment to be joint and several with the judgment entered against Monte D. Wise and Donna M Wise. The Court hereby reserves for future determination the remaining contingent and unknown claims of Plaintiff against Wise Electric Co., as well as all of the claims of Plaintiff against the other Defendants.

Entered this 17 day of _____, 1987.

~~JACK C. SILVER, CLERK~~

BY JAMES D. ELLISON

By _____
~~DEPUTY CLERK~~

3592003003-27

Entered

FILED

AUG 27 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

AETNA INSURANCE COMPANY,

Plaintiff,

vs.

WISE ELECTRIC CO., TRACY REE, LINDA REE, MONTE D. WISE, and DONNA M. WISE,

Defendants.

NO. 87-C-251-E

ORDER GRANTING PARTIAL DEFAULT JUDGMENT

The Court, being fully advised, finds as follows:

1. Plaintiff filed its complaint against Defendants, Wise Electric Co., Tracy Ree, Linda Ree, Monte D. Wise, and Donna M. Wise, on April 8, 1987.

2. On April 29, 1987, Monte D. Wise and Donna M. Wise were served with a copy of the summons and complaint.

3. Monte D. Wise and Donna M. Wise have failed to answer or otherwise plead within the time permitted by Rule 12, Fed. R. Civ. P.

4. In its complaint, Plaintiff prayed for judgment against Monte D. Wise, Donna M. Wise, and the other Defendants, jointly and severally, for its losses, some of which were known and accrued, some of which were contingent, and some of which were unknown. Plaintiff attached a summary of its known, accrued and contingent damages as Exhibit "B" to its complaint. This exhibit shows that $434,873.84 in damages are accrued. Plaintiff is entitled to default judgment in this amount at this time. In further support, Plaintiff has attached as Exhibit "C" to the motion for partial default judgment the affidavit of John A. Mooney, Plaintiff's representative.

5. Plaintiff does not seek a final judgment with respect to all of its claims against Monte D. Wise and Donna M. Wise at this time. As indicated, some of Plaintiff's expected losses are contingent at this time and will not be suffered until a later date. Further, there may be certain other unknown damages. Plaintiff does not seek judgment with respect to either of its contingent claims or its unknown claims at this time and asks the Court to reserve determination on these matters until a later date.

6. Under Rule 55, Fed. R. Civ. P., Plaintiff is entitled to have partial default judgment entered against Monte D. Wise and Donna M. Wise by the court clerk.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

Plaintiff's motion for partial default judgment is hereby granted, and partial default judgment is hereby rendered against Monte D. Wise and Donna M. Wise and in favor of Aetna Insurance Company for the amount of $434,873.84, plus $120.00 in costs, said judgment to be joint and several with the judgment entered against Wise Electric Co. The Court hereby reserves for future determination the remaining contingent and unknown claims of Plaintiff against Monte D. Wise and Donna M. Wise, as well as all of the claims of Plaintiff against the other Defendants.

Entered this 27 day of August, 1987.

~~JACK C. SILVER, CLERK~~

By _____
~~DEPUTY CLERK~~

3592003005-27

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

INSTRUCTIONAL SYSTEMS DEVELOPMENT CORPORATION,	)	
Plaintiff,	)	
vs.	)	Case No. 87-C-412-C
CARL WENZINGER, THOMAS P. BART, and VIRGINIA COBB,	)	
Defendants.	)	

DISMISSAL WITH PREJUDICE OF DEFENDANT, VIRGINIA COBB

The Plaintiff, Instructional Systems Development Corporation, by and through its attorney of record, Frank Gregory, hereby dismisses with prejudice the Defendant, Virginia Cobb, only, from the above numbered case.

Plaintiff specifically reserves any and all rights and claims it may have against Carl Wenzinger and Thomas P. Bart.

Respectfully submitted,

Frank Gregory
300 Citicorp Building
5001 East 68th Street
Tulsa, Oklahoma 74136
(918) 495-3564
Attorney for Plaintiff, ISDC

CERTIFICATE OF MAILING

I certify that on the 27 day of AUGUST, 1987, a true and correct copy of the above and foregoing Dismissal with Prejudice of Defendant, Virginia Cobb, was mailed with proper postage pre-paid thereon to: Peter B. Bradford, Esq., 900 First City Place, 204 N. Robinson, Oklahoma City, OK 73102 and Joseph H. Bocock, Esq., McAfee & Taft, 10th Floor, Two Leadership Square, Oklahoma City, OK 73102.

Frank Gregory

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE S. NOBLES,

Plaintiff,

-vs-

DIRECT PHARMACEUTICAL CORPORATION,

Defendant.

Case No. 87-C-436-B

NOTICE OF
DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, George S. Nobles, and hereby dismisses the above entitled case against the Defendant, Direct Pharmaceutical Corporation, with prejudice.

Don I. Nelson

DON I. NELSON OBA #6612
Attorney for Plaintiff
P. O. Box 209
Mannford, Ok. 74044
(918) 865-2121

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of August, 1987, I mailed a true and correct copy of the above and foregoing Dismissal With Prejudice, to Jack D. Bryant, 317 South Main, Suite 201, Tulsa, Oklahoma 74103, with postage prepaid thereon.

Don I. Nelson

DON I. NELSON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE ANNE AKPAN,

Defendant.

CIVIL ACTION NO. 87-C-454-E

DEFAULT JUDGMENT

This matter comes on for consideration this 27th day of August, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Joe Anne Akpan, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Joe Anne Akpan, acknowledged receipt of Summons and Complaint. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Joe Anne Akpan, for the principal sum of $747.98, plus accrued interest of $1,247.01 as of April 19, 1987, plus interest at the rate of 7 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.98 percent per annum until paid, plus costs of this action.

JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

PEP/mp

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

MARY HICKERSON, Individually
and as Personal Representative
of the Heirs of the Estate of
JAMES V. HICKERSON, Deceased — PLAINTIFF

VS. NO. 87-C-160 E

A C & S, INC., ET AL — DEFENDANTS

ORDER OF DISMISSAL

Upon the motion of the Plaintiff, the above cause of action against the Defendant Crown Cork & Seal Company, Inc. is hereby dismissed with prejudice.

IT IS SO ORDERED.

[illegible]
UNITED STATES DISTRICT JUDGE

DATE: 8/27/87

APPROVED:

Edward O. Moody
MOODY & RITCHEY, P.A.
506 First Federal Plaza
Little Rock, Arkansas 72201
(501) 376-0000

Theodore C. Skokos
SKOKOS, SIMPSON, GRAHAM
& RAINWATER, P.A.
300 Superior Federal Building
Capitol at Broadway
Little Rock, Arkansas 72201
(501) 374-1107

CROWN/HIC2

AUG 27 1987

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CLERK
U.S. DISTRICT COURT

TONYA HALL, by and through her parents, Bart and Charlotte Hall, and Charlotte Hall,

Plaintiffs,

vs.

TULSA CHILD DEVELOPMENT AND REGIONAL GUIDANCE CENTER, DEPARTMENT OF HUMAN SERVICES, BIXBY PUBLIC SCHOOL DISTRICT, ELEANOR POPE and PAM COSGROVE,

Defendants.

No. 87-C-185-C

O R D E R

Before the Court are various motions to dismiss filed by the defendants. Generally defendants contend the complaint should be dismissed in that plaintiffs have not stated a cause of action under 42 U.S.C. §1983 for which relief can be granted.

Plaintiffs brought this action under 42 U.S.C. §1983 to recover $53,588 in actual damages for alleged violations of their constitutional and statutory rights arising out of a state protective custody proceeding. Specifically plaintiffs contend that on October 31, 1985 Eleanor Pope, a psychologist with the Tulsa Child Development and Regional Guidance Center (Guidance Center) determined, from a phone call with Charlotte Hall, that Tonya Hall was suicidal and that the Department of Human Services (DHS) should intervene. Based upon this recommendation Pam

34.

Cosgrove, a social worker with DHS, made arrangements with the Bixby Public School to locate and confine Tonya Hall in order that they could obtain custody of her. However, due to Charlotte Hall's resistance, the DHS was not able to obtain possession of Tonya Hall until later at her home. The DHS took custody of Tonya and placed her in St. John's Hospital in Tulsa, Oklahoma. Tonya remained at St. John's Hospital for fourteen days until a state court judge ordered Tonya Hall be placed at Children's Medical Center for ten days for evaluation. Tonya underwent psychiatric treatment on an out-patient basis until December 15, 1985.

Plaintiffs allege that defendants acted "under color of law" in a manner that was unreasonable, improper and in violation of their constitutional rights as guaranteed by the Fourth and Fourteenth Amendments in the following ways:

1. Eleanor Pope acted without sufficient information when she sent a directive that Tonya Hall was suicidal thus setting in motion the machinery that lead to Tonya Hall being taken without notice to her parents.
2. Tonya Hall was denied due process when she requested to phone her parents.
3. Tonya Hall was denied equal protection law when she was placed in an adult ward of St. John's Hospital and held against her will.
4. Bart and Charlotte Hall's constitutionally protected rights were violated when their child was taken without

notice and Hearing and held for several days before a Hearing was granted.

Plaintiffs assert pendent claims of assault and battery, false imprisonment and emotional distress. Plaintiffs seek $53,588 in damages for lost wages, hospital and psychiatric expense, food, gasoline and emotional distress.

Defendants DHS and Guidance Center seek dismissal of the action against them as barred by the Eleventh Amendment to the United States Constitution.

The Department of Human Services is a state agency. The Tulsa Child Development and Regional Guidance Center is a separate state agency, governed by the Oklahoma State Department of Health. States and their agencies enjoy immunity from suit unless the state has clearly consented to be sued in federal court. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 99 (1984). There is no statutory provision contained in 42 U.S.C. §1983 which overrides the state's sovereign immunity. See Quern v. Jordan, 440 U.S. 332, 342 (1979), Foulks v. Ohio Department of Rehabilitation and Correction, 713 F.2d 1229, 1232-33 (6th Cir. 1983). The Supreme Court has held that "Congress must express its intention to abrogate the Eleventh Amendment in unmistakable language in the statute itself. Atascadero State Hospital v. Scanlon, 105 S.Ct. 3142 (1985). (reh.den. 106 S.Ct. 18). States are considered non-persons for §1983 purposes. Laje v. R. E. Thomason General Hospital, 665 F.2d 724, 727 (5th Cir. 1982) (f.n.2).

Plaintiffs argue that under 74 O.S. §85.26 and §85.29 the state has waived sovereign immunity by providing surety bonds to cover acts of state officers and employees. Plaintiffs' argument is without merit. Eleventh Amendment immunity applies unless it is unequivocally waived by the state. Pennhurst, supra at 99. Such waivers are recognized only when evidenced in state statutes "by the most express language or by such overwhelming implications from the text as leave no room for any other construction." Florida Dept. of Health & Rehab. Services v. Florida Nursing Home Assoc., 450 U.S. 147, 150 (1981). In order for a state statute or constitutional provision to qualify as a waiver, it must specify the state's intent to subject itself to suit in federal court. Atascadero State Hospital, supra. A state's waiver of sovereign immunity in its own courts is not a waiver of its Eleventh Amendment immunity in federal courts. Pennhurst, supra. In addition this immunity from suit extends to pendent state claims brought in federal court. Pennhurst, supra at 120. For the foregoing reasons, the motion to dismiss brought by defendants DHS and Guidance Center is hereby sustained.

Eleanor Pope, a psychologist with the Guidance Center, and Pam Cosgrove, a social worker with DHS, also seek dismissal. It is unclear to the Court from review of the complaint whether these individuals are being sued in their individual or official capacity. If these defendants are being sued in their official capacity, such action would be limited to injunctive relief and a retroactive monetary relief is not available. Thomas Edwards v.

Ruben Valdez, 789 F.2d 1477, 1481 (10th Cir. 1986). Plaintiffs have not sought injunctive relief in their complaint and therefore the action is subject to dismissal if brought as an "official capacity" action.

If plaintiffs' claim against these two individuals is brought in their individual capacities, then defendants Pope and Cosgrove are entitled to good faith qualified immunity from liability for damages under §1983. Wood v. Strickland, 420 U.S. 308 (1975) (reh.den. 421 U.S. 921). Under the principles of Wood, these defendants are not immune from liability if they knew or reasonably should have known that the action they took within the sphere of official responsibility would violate the constitutional rights of the plaintiffs affected, or if they took the action with malicious intention to cause a deprivation of such rights or other injury to the plaintiff. However, a compensatory award will be appropriate only if the state officials acted with such an impermissible motivation or with such disregard of the plaintiffs' clearly established constitutional rights that their action cannot reasonably be characterized as being in good faith. The Court cannot make these factual determinations under a motion to dismiss. Therefore the motions to dismiss brought by defendants Eleanor Pope and Pam Cosgrove are denied.

The remaining motion to dismiss is brought by defendant Bixby Public School District (School). The School contends plaintiffs' claim is barred by the Eleventh Amendment. The School's contention is without merit. The mere fact that public

schools receive state assistance and that policies and practices of public schools are regulated by the state legislature does not necessarily qualify public schools for Eleventh Amendment protection from liability. An agency or department of the State is entitled to sovereign immunity only if it is determined that they are an arm or alter ego of the State. See, Laje v. R. E. Thomason General Hospital, supra, 665 F.2d at 727. The test, as stated in Laje, is as follows:

> A federal court must examine the particular entity in question and its powers and characteristics as created by state law to determine whether the suit is in reality a suit against the state itself. 665 F.2d at 727 citing Mt. Healthy City School Dist. v. Doyle, 429 U.S. 274 (1977) and Hander v. San Jacinto Jr. College, 519 F.2d 273, 279 (5th Cir. 1975).

Further, courts look to the degree of local autonomy and control. Under 70 O.S. §18-101(2) it is the legislative policy and purpose to "strengthen and encourage local responsibility for control of public education." The Tenth Circuit has recognized that local public schools are not shielded with sovereign immunity. See, e.g., Bertot v. School Dist. No.1, Albany County, Wyoming, 613 F.2d 245 (10th Cir. 1979); Childers v. Indp. School Dist. No.1 Bryan, County, Oklahoma, 676 F.2d 1338 (10th Cir. 1982). In Oklahoma, school districts have the power to sue, be sued and to contract in the same capacity was a corporation for public purposes. See, 70 O.S. §5-105. The Court finds and concludes plaintiffs' complaint against the School is not subject to dismissal based upon the Eleventh Amendment.

The School contends that plaintiffs' cause of action under §1983 is barred by the one year statute of limitation contained in the political subdivision Torts Claims Act. 51 O.S. §156(B), citing Childers v. Indp. School District No.1, supra at 1342. However, Childers is a 1982 Tenth Circuit case. More recently, in Wilson v. Garcia, 471 U.S. 261 (1985), the Supreme Court held that all §1983 claims for statute of limitations purposes will be governed by the state's limitation period "for injury to personal rights." The court reasoned that almost every §1983 claim can be favorably analogized to more than one of the common-law forms of action, each of which may be governed by a different statute of limitation. Therefore for practical considerations and uniformity of application, the court held that all §1983 claims be governed by the same limitation period regardless of the common-law tort allegedly violated.

In Oklahoma, 12 O.S. §95(3) is the applicable statutory period for all §1983 claims. This is the most analogous Oklahoma statute providing for a two year limitation period for injury to rights of another, and it has been interpreted by the Tenth Circuit as characteristic of an action for injury to personal rights. See, Abbitt v. Franklin, 731 F.2d 661 (10th Cir. 1984).

The School asserts plaintiffs failed to allege facts showing "state action" which is a necessary element for a §1983 cause of action. The Court finds that a local governmental instrumentality, such as a public school, qualifies as a person for purposes of the requirements of §1983. See generally, Monell v. Dept. of

Social Services of the City of New York, 436 U.S. 658, 664-91 (1978). Actions of school officials carrying out policies or practices established by the school are clearly those of a person acting under color of state law. See, e.g., New Castle County Vocational Tech. Ed. Assoc. v. Bd. of Ed., 569 F.Supp. 1482 (D.C.Dela. 1983).

Finally, the School seeks dismissal on the premise that the plaintiffs failed to plead sufficient facts to set forth a cause of action under 42 U.S.C. §1983. From a review of the Complaint, plaintiff has not stated sufficient facts tending to show Bixby Public Schools have violated plaintiffs' rights protected under 42 U.S.C. §1983. However, in a motion to dismiss, the Court is limited to a review of matters contained on the face of the pleadings. The Court may not consider matters, referenced in briefs, which go outside the pleadings. Whether plaintiffs have properly plead a §1983 action against defendants should be reviewed by the Court under a motion for summary judgment. Therefore, the Court sua sponte converts the motion of the Bixby Public Schools to dismiss, as to these remaining matters, to a motion for summary judgment. The defendant is granted leave of fifteen days to file any additional brief and supporting documents in support of a motion for summary judgment, and plaintiffs are granted ten days thereafter to file a responsive brief with supporting documents.

WHEREFORE, premises considered, IT IS THE ORDER OF THE COURT that the motion to dismiss brought by defendant Department of Human Services is hereby GRANTED.

IT IS THE FURTHER ORDER OF THE COURT that the motion to dismiss brought by defendant Tulsa Child Development and Regional Guidance Center is hereby GRANTED.

IT IS THE FURTHER ORDER OF THE COURT that the motions to dismiss brought by defendants Eleanor Pope and Pam Cosgrove are DENIED.

FURTHER, THE COURT ORDERS that the motion to dismiss brought by defendant Bixby Public School District is converted to a motion for summary judgment, as specifically set forth above. Defendant Bixby Public School District is granted leave of fifteen days to file its motion with supporting documents, and plaintiffs are granted leave of ten days thereafter to file responsive brief with supporting documents.

IT IS SO ORDERED this 26th day of August, 1987.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM HENRY SANDERS,

Petitioner,

v.

EASTERN STATE HOSPITAL,
DR. CHARLES BUCKHOLTZ,
Superintendent,

Respondents.

86-C-1063-E

FILED

AUG 26 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed August 5, 1987, in which the Magistrate recommended that petitioner's application for a writ of habeas corpus be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendation of the Magistrate should be and hereby are affirmed.

It is Ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is dismissed for failure of petitioner to exhaust his available state remedies.

Dated this 26th day of August, 1987.

James O. Ellison

UNITED STATES DISTRICT JUDGE

101

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DALE LAMPHEAR, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
SIMMONS INDUSTRIES, INC., a foreign corporation,	)	
	)	
	)	
Defendant.	)	Case No. 86-C-656 E

STIPULATION ~~FOR~~ OF DISMISSAL WITH PREJUDICE

It is hereby stipulated that the above-entitled action be discontinued and dismissed with prejudice and without cost to either party.

DATED this 26 day of August, 1987.

DALE LAMPHEAR, JR.
Plaintiff

CRAIG DAWKINS
Suite 303,
5101 Classen Boulevard
Oklahoma City, Oklahoma 73118

Attorney for Plaintiff

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.

By: _____
Carl D. Hall, Jr.
400 Old City Building
124 East Fourth Street
Tulsa, Oklahoma 74103
(918) 584-5182

Attorney for Defendant

HAP/jch

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ELAINE TERHUNE and ROBERT TERHUNE,	)	
Plaintiffs,	)	
vs.	)	No. 86-C-5-E
GULF INSURANCE COMPANY,	)	
Defendant.	)	

ORDER OF DISMISSAL

NOW on this 26th day of August, 1987, upon the written application of the Plaintiffs, Elaine Terhune and Robert Terhune, and the Defendant, Gulf Insurance Company, for a Dismissal with Prejudice as to all claims and causes of action involved in the Complaint of Terhune v. Gulf, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint, and have requested the Court to Dismiss said Complaint with prejudice, to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of said Plaintiffs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all claims and causes of action of the Plaintiffs, Elaine Terhune and Robert Terhune, against the Defendant, Gulf Insurance Company, be and the same hereby are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

JIM LLOYD

Attorney for the Plaintiffs

HARRY A. PARRISH

Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES E. HOPKINS,

Plaintiff, Pro Se,

vs.

PAULA FARQUHAR, Manager, THE MARINA APARTMENTS, TULSA, OKLAHOMA and THE CHAMPION FINANCIAL CORPORATION, SANTA MONICA, CALIFORNIA, et al.,

Defendants.

Case No. 87-C-359-B

FILED

AUG 26 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes on for consideration this 26th day of August, 1987, upon the joint application and stipulation of the parties to dismiss the above entitled cause of action with prejudice.

The Court, being fully advised in the premises and upon the joint application of the parties finds that the above entitled cause of action should be and is hereby dismissed, with prejudice, to the future filing of any action herein.

BE IT THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above entitled cause of action be and is hereby dismissed with prejudice.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

CHARLES E. HOPKINS, PRO SE

SANDERS & CARPENTER

By: _____
PHILIP McGOWAN
Attorneys for Defendants.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 26 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ELDON LOWELL YOCUM, CHURCHES OF CHRIST & IRS,

Plaintiffs,

v.

JIMMY SWAGGART, et al,

Defendants.

87-C-457-E

ORDER

The Court has for consideration the Report and Recommendation of the Magistrate filed June 19, 1987, in which the Magistrate recommended that Plaintiff's Civil Rights Complaint be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that Plaintiff's Complaint is dismissed pursuant to Title 28 U.S.C. §1915(d) as frivolous and without merit.

Dated this 25th day of ~~July~~ Aug., 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

4

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	FILED
	)	
Plaintiff,	)	AUG 26 1987
	)	
vs.	)	Jack C. Silver, Clerk
	)	U.S. DISTRICT COURT
PATRICIA THOMPSON, a/k/a PATRICIA ANN THOMPSON, a/k/a PATRICIA A. THOMPSON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 87-C-585-B

AGREED JUDGMENT

This matter comes on for consideration this 26th day of August, 1987, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Patricia Thompson, a/k/a Patricia Ann Thompson, a/k/a Patricia A. Thompson, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Patricia Thompson, a/k/a Patricia Ann Thompson, a/k/a Patricia A. Thompson, has not filed an Answer but in lieu thereof has agreed that she is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against her in the amount of $924.79, plus interest of $88.06 as of June 9, 1987, plus interest at the rate of 3 percent per annum, until judgment, plus interest thereafter at the legal rate until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Patricia Thompson, a/k/a Patricia Ann Thompson, a/k/a Patricia A. Thompson, in the amount of $924.79, plus interest of $88.06 as of June 9, 1987, plus interest at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.98 percent until paid, plus the costs of this action.

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

NANCY NESBITT BLEVINS
Assistant U.S. Attorney

PATRICIA ANN THOMPSON

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania corporation, and CHICAGO UNDERWRITING GROUP, INC., a Delware corporation,	)	
Plaintiff,	)	
V.	)	87-C-681-B
LEE KEELING & ASSOCIATES, INC.	)	
Defendant.	)	

ORDER

Plaintiff's Motion to Quash was referred to the Magistrate for resolution. There being no indication that movant's counsel has conferred in good faith with opposing counsel, the Magistrate finds that such motion shall not be heard by the Court. Local Rule 14(e) of the Rules of the United States District Court for the Northern District of Oklahoma.

It is so Ordered this 24TH day of August, 1987.

JEFFREY S. WOLFE
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 26 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FIRST REPUBLICBANK DALLAS, N.A. (formerly known as RepublicBank Dallas, N.A.), a national banking association, as TRUSTEE, Plaintiff, vs. THURSTON ASSOCIATES, LTD., an Oklahoma limited partnership, Defendant.	No. 87-C-599-B

NOTICE OF DISMISSAL

The Plaintiff, First RepublicBank Dallas, N.A., appears by and through its counsel, M. E. McCollam of Conner & Winters, and hereby dismisses the above styled case without prejudice, pursuant to Rule 41(a)(1). The Plaintiff states that the Defendant has not, as of the filing of this Notice of Dismissal, served upon the Plaintiff an Answer or Motion for Summary Judgment; this action is not a class action subject to the provisions of Rule 23(e) nor has a receiver been appointed thereby invoking the provisions of Rule 66 of the Federal Rules of Civil Procedure.

M. E. McCOLLAM

By _____

CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff,
FIRST REPUBLICBANK DALLAS, N. A.
(formerly RepublicBank Dallas,
N.A.) as TRUSTEE

OF COUNSEL:

CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Michael R. Boulden
Susan L. Karmanian
LOCKE PURNELL RAIN HARRELL
3600 RepublicBank Tower
Dallas, Texas 75201-3989
(214) 754-7400

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 1987, a true and correct copy of the above and foregoing Notice of Dismissal was delivered to:

Jay B. White, Esq.
Jones, Givens, Gotcher, Bogan
& Hilborne
3800 First National Tower
Tulsa, Oklahoma 74103

M. E. McCollam

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES D. DURHAM and LYNN C. DURHAM, Plaintiffs,	)	
vs.	)	No. 85-C-507-C
THE DOW CHEMICAL COMPANY, Defendant.	)	

J U D G M E N T

This matter came on for hearing regarding the mandate of the United States Court of Appeals for the Tenth Circuit directing this Court to amend its Order of July 24, 1985. The issues having been duly presented and a decision having been duly rendered in accordance with the order filed on August 21, 1987,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered on behalf of the Dow Chemical Company in the amount of $10,000, and that this award is assessed in the amount of $5,000 against the plaintiffs, James D. Durham and Lynn C. Durham, jointly and severally, and that the remaining $5,000 of the award is assessed against Kevin Abel, counsel for the plaintiffs.

IT IS SO ORDERED this 26th day of August, 1987.

H. Dale Cook

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

MAPCO, INC. and CONSOLIDATED SUBSIDIARIES, Plaintiff	)	
v.	)	CIVIL NO. 84-C-256-E
UNITED STATES OF AMERICA, Defendant	)	

FINAL JUDGMENT

In accordance with this Court's Findings of Fact and Conclusions of Law, plaintiff's federal income tax liabilities for the years in suit have been determined as follows:

1973	$107,483	overpayment of tax
1974	394,771	overpayment of tax
1975	(38,220)	underpayment of tax

Accordingly, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiff Mapco, Inc., shall recover $464,034 from Defendant United States for corporate federal income taxes for the period from 1973-1975, plus interest thereon according to law. It is further

ORDERED, ADJUDGED and DECREED that each party shall bear its own costs.

SO ORDERED this 25th day of August, 1987.

UNITED STATES DISTRICT JUDGE

54

APPROVED AS TO FORM ONLY:

JOHN EAGLETON
Houston & Klein, Inc.
3200 University Tower
1722 South Carson
Tulsa, Oklahoma 74101
(918) 583-2131

ATTORNEY FOR PLAINTIFF
MAPCO, INC.

LAYNE R. PHILLIPS
United States Attorney

By:

for Michael S. Greene

LOUISE P. HYTKEN
Attorney, Tax Division
Department of Justice
Rm. 5B31, 1100 Commerce St.
Dallas, Texas 75242
(214) 767-0293

ATTORNEY FOR DEFENDANT
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TIMOTHY DEWAYNE KING,)
)
Petitioner,)
)
v.) 86-C-636-C
)
THOMAS WHITE, et al,)
)
Respondents.)

FILED
AUG 25 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed August 4, 1987, in which the Magistrate recommended that petitioner's application for a writ of habeas corpus be dismissed without prejudice. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendation of the Magistrate should be and hereby are affirmed.

It is Ordered that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. §2254 is dismissed without prejudice.

Dated this 24th day of August, 1987.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

17.

Entered

AUG 25 1987

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

DYCO PETROLEUM CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 87-C-275-C
	)	
ARKLA ENERGY RESOURCES, a Division of ARKLA, INC.,	)	
	)	
Defendant.	)	

O R D E R

Now before the Court for its consideration is the motion of the defendant to dismiss the second cause of action alleged in the Complaint filed in this case. The plaintiff having responded, the issue is now ready for the Court's determination.

In its first cause of action, the plaintiff alleges breach of contract and seeks actual damages. In its second cause of action, the plaintiff alleges that the same actions of the defendant referred to in the first cause of action constitute tortious breach of contract, and plaintiff seeks punitive damages. Defendant asks the Court to dismiss the second cause of action on the ground that it is not recognized by Oklahoma law.

In Oklahoma, punitive damages may not be awarded in an action arising from a contract. 23 O.S. §9. See also Phillips

Machinery Co. v. Leblond, Inc., 494 F.Supp. 318 (N.D.Okla. 1980). The determinative question is whether the contract and tort causes of action must have an independent basis, i.e., whether merely alleging that a breach of contract was willful and malicious is sufficient to state a cause of action in tort. The Oklahoma Supreme Court has stated:

> As a general rule, damages for breach of contract are limited to the pecuniary loss sustained, and exemplary or punitive damages are not recoverable. This rule is not applicable, however, in those exceptional instances where the breach amounts to an independent, willful tort.

Z. D. Howard Co. v. Cartwright, 537 P.2d 345, 347 (Okla. 1975) (emphasis added). In Burton v. Juzwik, 524 P.2d 16 (Okla. 1974), the Oklahoma Supreme Court affirmed the trial court's striking of a plaintiff's allegations regarding punitive damages in an action for breach of an alleged oral contract. The Oklahoma Supreme Court stated that the trial court's action was proper because the gravamen of the plaintiff's action was based upon breach of contract. In order to state a cause of action sounding in tort, the plaintiff must allege the breach of an independent duty not imposed by the contract itself. See e.g., Hall Jones Corp. v. Claro, 459 P.2d 858 (Okla. 1969) (breach of implied covenant to prevent drainage). No such independent duty has been alleged as being breached here. The Court has concluded that the allegations in the second cause of action regarding defendant's actions, even if taken as true, do not state an independent tort.

It is the Order of the Court that the motion of the defendant to dismiss the Complaint's second cause of action should be and hereby is GRANTED.

It is the further Order of the Court that the defendant is hereby granted ten days in which to respond to the request of the plaintiff for jury trial.

IT IS SO ORDERED this 14th day of August, 1987.

H. DALE COOK
Chief Judge, U. S. District Court

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA and HAYS V. HETTINGER, Regional Counsel, Federal Aviation Administration,	)	FILED
Petioners,	)	AUG 25 1987
vs.	)	Jack C. Silver, Clerk U.S. DISTRICT COURT
ARLAN E. NUSS, d/b/a NUSS AIRCRAFT REPAIRS, and RIVERSIDE AERO, INC.,	)	
Respondents.	)	Case No. 87-C-180-E

ORDER DISCHARGING RESPONDENTS IN DISMISSAL

On this 25th day of Aug., 1987, Petitioners' Motion to Discharge Respondents and for Dismissal came for hearing and the Court finds that Respondents have now complied with the Federal Aviation Administration's subpoena served on Respondents on February 5, 1987, and further proceeding herein are unnecessary and that the Respondents, Arlan E. Nuss, d/b/a Nuss Aircraft Repairs, and Riverside Aero, Inc. should be discharged and this action dismissed.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the Respondents, Arlan E. Nuss, d/ba/ Nuss Aircraft Repairs, and Riverside Aero, Inc., be and they are hereby discharged from any further proceedings herein in this cause of action and petition are hereby dismissed.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

FILED

AUG 25 1987

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 85-C-238-C
$10,081.00 IN UNITED STATES CURRENCY, Defendant.	)	

O R D E R

Now before the Court for its consideration is the motion of the claimant Riley Mitchell Jones to vacate this Court's Order and Judgment entered on June 27, 1987, in which the Court declared defendant $10,081.00 in United States Currency forfeited to the plaintiff. The motion further seeks dismissal of the complaint.

In his first argument, claimant alleges that the Court was without jurisdiction to grant summary judgment. He refers the Court to United States v. $39,000 in Canadian Currency, 801 F.2d 1210 (10th Cir. 1986), in which the United States Court of Appeals for the Tenth Circuit upheld the district court's dismissal without prejudice of a civil forfeiture action such as the one under review. The Court noted that the Supplemental Rules for Certain Admiralty and Maritime Claims, 28 U.S.C., apply to actions in rem, such as civil forfeitures. Id at 1215.

52.

According to Rule E(2)(a) of the Supplemental Rules, a complaint in an in rem action

> shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

The court held that the complaint under review did not meet this requirement, and that therefore the claimant's motion to dismiss was properly granted.

Upon review, the Court finds that the Complaint in the case at bar, which was filed prior to Canadian Currency, supra, does indeed consist largely of conclusory allegations or repetition of statutory language. However, claimant filed no motion to dismiss. On April 3, 1985, he filed his claim and answer, in which he demonstrated familiarity with the facts regarding the property and its seizure, but simply denied that the cash had been exchanged or was to be exchanged for controlled substances. The vagueness of a complaint is not a jurisdictional defect, and therefore the claimant's post-judgment motion to dismiss on that ground must be denied. Admiralty law recognizes that such defects in the complaint must be objected to by the defendant or they are waived. See, e.g., Monangahela River Consol. Coal & Coke Co. v. Schinnerer, 196 F.375 (6th Cir. 1912), cert. denied, 226 U.S. 612 (1912), and Merritt & Chapman Derrick & Wrecking Co. v. Chubb, 113 F.173 (2nd Cir. 1901). This case progressed for over two years, through the summary judgment stage. In his memorandum opposing the government's motion for summary judgment,

the claimant responded in detail to the government's statement of material facts as to which the government contended no genuine issue existed. At no time did claimant assert that he was unclear as to the allegations or factual bases upon which the government proceeded. Now, two years after the complaint was filed, and only after an adverse decision regarding summary judgment, the claimant asks the Court to dismiss the complaint. The Court does not believe that this is the import of Canadian Currency, supra.

For his second argument, the claimant contends that the Court erred in applying the probable cause analysis mandated in such forfeiture proceedings. The Court has carefully reviewed its Order of June 27, 1987, and believes the analysis and conclusions contained therein to be correct.

It is the Order of the Court that the motion of the claimant to vacate and to dismiss is hereby DENIED.

IT IS SO ORDERED this 24th day of August, 1987.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHNNY W. ALLBRITTON,)
)
Plaintiff,)
)
v.) 85-C-225-C
)
MARGARET HECKLER, Secretary)
of Health & Human Services,)
)
Defendant.)

ORDER

The Court has for consideration the Recommendation of the Magistrate filed August 4, 1987, in which the Magistrate recommended that plaintiff's motion to reconsider the denial of attorney's fees and costs be granted, and that plaintiff be awarded attorney's fees but be denied costs. No objections or exceptions have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that plaintiff's motion to reconsider the denial of attorney's fees and costs is granted.

It is further Ordered that plaintiff is awarded attorney's fees in the amount of $3,552.25.

It is further Ordered that plaintiff's application for costs of $60.00 is denied.

Dated this 24 day of August, 1987.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IVAN SAULMON,

Plaintiff,

v.

OKLAHOMA DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

No. 85-C-799-E

ORDER OF DISMISSAL

NOW on this 25th day of August, 1987, this matter comes on for hearing on the Joint Motion of all parties for dismissal of this action. Being advised of the premises and at the request of the parties this Motion is granted and this case is dismissed without prejudice, each side to bear its own costs. The Court understands and contemplates that this dismissal is part of an overall settlement which entails the simultaneous dismissal of the appeal filed herein and currently pending before the United States Court of Appeals for the Tenth Circuit, that Court's case No. 86-2826.

SO ORDERED THIS _____ DAY OF AUGUST, 1987.

S/ JAMES O. ELLISON

JAMES L. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES MARTIN DIXON,

Plaintiff,

v.

CHARLES MING, HAROLD A. MURNAN, FRED JORDAN, and CHARLES TALL CHIEF,

Defendants.

85-C-737-E

ORDER

The Court has for consideration the Findings and Recommendation of the Magistrate filed August 4, 1987, in which the Magistrate recommended that the motion to dismiss filed by defendants Murnan, Jordan and Tall Chief be granted, and that plaintiff's civil rights complaint be dismissed against these defendants. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendation of the Magistrate should be and hereby are affirmed.

It is Ordered that the motion to dismiss filed by defendants Murnan, Jordan and Tall Chief is granted and plaintiff's civil rights complaint pursuant to 42 U.S.C. §1983 and the Fair Housing Act of 1968 is dismissed against these defendants.

Dated this 25th day of August, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

53

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM L. DEES, JR., Plaintiff,	)	
-vs-	)	Civil No. 84-C-68-E
OTIS R. BOWEN, M.D., Secretary of Health and Human Services of the United States of America, Defendant.	)	

ORDER OF DISMISSAL

The Court hereby finds that this action has become moot upon remand to the Secretary and the determination to reverse the previous findings and determination and to reinstate fully the disability benefits to the Plaintiff and to award the same to his heirs, and the same should be dismissed with prejudice.

Accordingly, IT IS ORDERED that this action be and hereby is dismissed with prejudice.

Dated this 23rd day of August, 1987.

[illegible]

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

MERCEDES-BENZ CREDIT CORPORATION, formerly known as Freightliner Credit Corporation, a Delaware Corporation,	)	
vs.	)	Case #87-C-587-B
KROBLIN REFRIGERATED XPRESS,INC., an Iowa Corporation, KROBLIN TRANSPORTATION SYSTEMS, INC., an Iowa Corporation	)	

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other prupose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of August, 1987.

Thomas R. Brett

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MERCEDES-BENZ CREDIT CORPORATION, formerly known as Freightliner Credit Corporation, a Delaware corporation, Plaintiff, vs. KROBLIN REFRIGERATED XPRESS, INC, an Iowa corporation, and KROBLIN TRANSPORTATION SYSTEMS, INC., an Iowa corporation, Defendants.	Case No. 87-C-587-B

NOTICE OF BANKRUPTCY FILING

Please take notice that Kroblin Refrigerated Xpress, Inc. and Kroblin Transportation Systems, Inc., defendants herein, each commenced voluntary bankruptcy cases under Chapter 11 of the United States Bankruptcy Code on August 14, 1987, and all actions against these debtors are stayed pursuant to the provisions of the United States Bankruptcy Code.

Respectfully submitted,

Neal Tomlins

Neal Tomlins
BAKER, HOSTER, McSPADDEN,
CLARK, RASURE & SLICKER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Kroblin Refrigerated Xpress Inc. and Kroblin Transportation Sytems, Inc.

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of August, 1987, a true and correct copy of the above and foregoing Notice of Bankruptcy Filing was mailed, first class postage prepaid, to John B. Heatly, Michael R. Ford and Doneen Douglas Jones, Fellers, Snider, Blankenship, Bailey & Tippens, 2400 First National Center, Oklahoma City, Oklahoma 74102.

Neal Tomlins

Neal Tomlins

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 24 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORS CORPORATION, an Oklahoma corporation, UENTECH, an Oklahoma corporation, and ORS DEVELOPMENT CORPORATION, an Oklahoma corporation,

Plaintiffs,

v.

No. 87-C-426-E

WALTER L. MAGUIRE a/k/a WALTER L. MAGUIRE, SR.; WALTER L. MAGUIRE, JR. a/k/a TERRY MAGUIRE; THE MAGUIRE FOUNDATION, INC., a Connecticut corporation; UNITERRA CORPORATION, INC., a Foreign Corporation; ANTHONY J. GARONE and BARBARA GARONE, husband and wife; TIMOTHY TULLEY; DONALD NUNN and SANDRA MAGUIRE NUNN, husband and wife; PREMIER TITLE AND MORTGAGE FOURTH; E. C. SCRANTON MEMORIAL LIBRARY; DANIEL C. DeROULET and MEGAN DeROULET, husband and wife; HAMMONASSET SCHOOL, INC.; BUCKLEY COUNTRY DAY SCHOOL; EMMA WILLARD SCHOOL; RONALD MENEO; YALE UNIVERSITY COLLECTION OF MUSICAL INSTRUMENTS; YALE UNIVERSITY DEPARTMENTS OF GEOLOGY AND GEOPHYSICS; LORETTA E. WAKEM,

Defendants.

WALTER L. MAGUIRE a/k/a WALTER L. MAGUIRE, SR.; WALTER L. MAGUIRE, JR. a/k/a TERRY MAGUIRE; THE MAGUIRE FOUNDATION, INC., a Connecticut corporation; and UNITERRA CORPORATION, a Nevada corporation,

Defendants/Third-Party Plaintiffs,

v.

ROBERT A. ALEXANDER, JR., J. L. DIAMOND, V. E. GOODWIN, and HOMER L. SPENCER, JR.,

Third-Party Defendants.

REPLY OF THIRD-PARTY PLAINTIFF WALTER L. MAGUIRE, JR. TO COUNTERCLAIM OF THIRD-PARTY DEFENDANT, ROBERT A. ALEXANDER, JR.

COMES NOW Third-Party Plaintiff Walter L. Maguire, Jr. ("Maguire") and for his Reply to the Counterclaim of Third-Party Defendant Robert A. Alexander, Jr. ("Alexander"), alleges and states:

1. Maguire admits the allegations in Paragraph 1 of Alexander's Counterclaim.

2. Maguire admits the allegations in Paragraph 2 of Alexander's Counterclaim.

3. Maguire admits the allegations in Paragraph 3 of Alexander's Counterclaim.

4. Maguire admits the allegations in Paragraph 4 of Alexander's Counterclaim.

5. Maguire admits the allegations in Paragraph 5 of Alexander's Counterclaim.

6. Maguire admits the allegations in Paragraph 6 of Alexander's Counterclaim.

7. Maguire admits the allegations in Paragraph 7 of Alexander's Counterclaim.

8. Maguire admits the allegations in Paragraph 8 of Alexander's Counterclaim.

9. Maguire denies the allegations in Paragraph 9 of Alexander's Counterclaim.

10. Maguire denies the allegations in Paragraph 10 of Alexander's Counterclaim.

11. Maguire denies the allegations in Paragraph 11 of Alexander's Counterclaim.

12. Maguire denies the allegations in Paragraph 12 of Alexander's Counterclaim.

13. Maguire incorporates his answer to Paragraphs 1-12 of Alexander's Counterclaim herein.

14. Maguire denies the allegations of Paragraph 14 of Alexander's Counterclaim.

15. Maguire denies the allegations of Paragraph 15 of Alexander's Counterclaim.

16. Maguire denies the allegations of Paragraph 16 of Alexander's Counterclaim.

17. Maguire denies the allegations of Paragraph 17 of Alexander's Counterclaim.

18. Maguire denies the allegations of Paragraph 18 of Alexander's Counterclaim.

AFFIRMATIVE DEFENSES

19. Count II of Alexander's Counterclaim fails to state a claim upon which relief can be granted.

20. Alexander has breached the July 27, 1984 Agreement in part by failing to deliver the twelve thousand (12,000) fully registered and freely tradeable shares of ORS stock under Paragraph 4(ii) of the Agreement.

21. Alexander's claims are barred by estoppel.

WHEREFORE, Third-Party Plaintiff Walter L. Maguire, Jr. prays that Third-Party Defendant Robert A. Alexander's

Counterclaim be dismissed with prejudice, that Alexander take nothing thereon, and that Maguire be awarded his costs and attorneys' fees as well as such other and further relief as the Court deems proper.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON

By Claire V Eagan

Claire V. Eagan
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2735

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Reply to each of the following attorneys or parties on the 24th day of August, 1987, with proper postage affixed thereto:

COMFORT, LIPE & GREEN, P.C.
James E. Green, Jr.
2100 Mid-Continent Tower
Tulsa, Oklahoma 74103
ATTORNEYS FOR PLAINTIFFS

Robert H. Tips
525 S. Main - Suite 210
Tulsa, Oklahoma 74103
ATTORNEYS FOR PLAINTIFFS

Michael L. Seymour
1717 East 15th Street
Tulsa, Oklahoma 74104
ATTORNEY FOR THIRD-PARTY
DEFENDANT HOMER L.
SPENCER, JR.

Crawford, Crowe &
Bainbridge P.A.
B. Hayden Crawford
Marilyn S. Modin
1714 First National Building
Tulsa, Oklahoma 74103
ATTORNEYS FOR THIRD-PARTY
DEFENDANT,
ROBERT A. ALEXANDER

Kenn Bradley
4815 S. Harvard 418
Tulsa, Oklahoma 74135
ATTORNEY FOR THIRD-PARTY
DEFENDANT V. E. GOODWIN

Claire V Eagan
Claire V. Eagan

C-22
5/84

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FDIC,

Plaintiff(s),

vs.

Dorothy V. McDonald, et al.

Defendant(s).

No. 86-C-1127-C

FILED

AUG 21 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 20 day of August, 1987.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATE DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

ANITA CARTER, Special Administratrix of the Estates of Wilma Ingram Marco and Hartwell P. Ingram,	)	
Plaintiff,	)	
vs.	)	Case No. 85-C-96-C
GYM RESOURCES, INC.; DAN MORDHORST; JENNIFER LEDFORD; and STANFORD ENERGY, INC.,	)	
Defendants.	)	

FILED

AUG 21 19

U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 21 day of August, 1987, upon the written application of the Plaintiff and Defendants for a Dismissal With Prejudice of all matters, causes of action and issues, involved in the Complaint of the Plaintiff, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims against the Defendants involved in the Complaint.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by this Court that the above-styled and numbered action is hereby dismissed with prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM & CONTENT:

MORRIS and MORRIS

By: _____
Greg A. Morris
Attorney for Plaintiff

LOEFFLER & ALLEN

By: _____
Sam T. Allen, IV
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EARL L. WEATHERFORD,

Plaintiff,

vs.

OTIS R. BOWEN, M.D., Secretary of Health and Human Services,

Defendant.

No. 86-C-731-C

ORDER

Now before the Court for its consideration are the objections of the plaintiff to the findings and recommendations of the United States Magistrate.

On August 11, 1986, plaintiff brought this action pursuant to 42 U.S.C. §405(g) to review a disallowance of disability benefits under the Social Security Act. A hearing was held before the Magistrate on February 26, 1987, at which time the matter was taken under advisement. On April 8, 1987, the Magistrate issued his findings and recommendations in which he recommended that the decision of the Secretary be affirmed.

The Court has independently reviewed the pleadings, briefs, exhibits, case file and applicable statutory and common law and finds that the recommendations of the Magistrate are consistent with the applicable rules of law.

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Therefore, premises considered, it is the Order of the Court that the final decision of the Secretary of Health and Human Services is hereby AFFIRMED.

IT IS SO ORDERED this 19th day of August, 1987.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RONNIE L. TRAYLOR, Plaintiff, v. DISTRICT JUDGE DONALD LANE, et al, Defendants.	)	87-C-596-B

FILED

AUG 21 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

This action is before the court upon the plaintiff's complaint. A motion to proceed in forma pauperis was granted on July 27, 1987 and the plaintiff's complaint was thereafter filed. The complaint is now to be tested under 28 U.S.C. Section 1915(d). If the complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the plaintiff can make a rational argument on the law or the facts to support his claim. Henriksen, at 854. Applying the test to plaintiff's claims, the court finds that the instant action should be dismissed for the following reasons.

In Count I of the complaint, plaintiff alleges that defendant Parratt as a witness against plaintiff in a Tulsa County District Court jury trial, made defamatory statements which caused the plaintiff great public embarrassment and damaged plaintiff's character. However, defamation alone is not actionable under Section 1983. Paul v. Davis, 424 U.S. 693, 701, 47 L.Ed.2d. 405, 96 S.Ct. 1155 (1976); Underwood v. Pritchard, 638

F.2d 60 (8th Cir. 1981). Plaintiff further alleges in Count I, that defendant Parratt misled the jury during her testimony. The Tenth Circuit Court of Appeals in addressing a similar action noted that witnesses testifying at trial are not acting under color of state law. Thus, a Section 1983 claim against a witness for testifying at trial is frivolous. Bennett v. Passic, 545 F.2d 1260, 1264 (10th Cir. 1976).

The final allegation in Count I is that plaintiff was denied a jury of his peers for the reason that none of the jurors had the same social status, age bracket, income bracket, or racial identity. Plaintiff is not entitled to any particular make up of jurors. The fact that there is a constitutional right to a system of jury selection that is not purposefully exclusionary does not entail a right to a jury of any particular racial composition. City of Mobile v. Bolden, 446 U.S. 55, n. 24, 64 L.Ed. 2d 47, 100 S.Ct. 1490 (1980). Of course, the Equal Protection Clause does guarantee a criminal defendant that the state will not exclude members of his race from the jury venire on account of race. Batson v. Kentucky, U.S. , 90 L.Ed. 2d. 69, 106 S.Ct. 1712 (1986). But, in the instant action, plaintiff has made no allegation that members of his race were purposefully excluded from the jury venire, or that the jury selection process is not designed to reflect the composition of the community at large. Conclusory allegations without more, are subject to dismissal.

In Count II, plaintiff alleges that defendant (witness)

Parratt and defendant (Assistant District Attorney) Hiddle conspired to withhold exculpatory testimony causing plaintiff pain, suffering, and emotional distress. Nevertheless, Count II must fail for the reason that prosecutors are entitled to absolute immunity from liability for actions taken while performing their prosecutorial function, under 42 U.S.C. Section 1983. Imbler v. Pachtman, 424 U.S. 409, 427, 47 L.Ed. 2d 128, 96 S.Ct 984 1976). The claim against defendant Parratt must fail because plaintiff makes no allegation that the witness was acting under color of state law. Bennett supra, at 1264.

In plaintiff's final count, he alleges that defendant (District Judge) Lane allowed damaging hearsay testimony admitted at plaintiff's criminal trial. Plaintiff's final count is also without merit. It has been well settled since 1869 (Randall v Brigham, 7 Wall. 523) that judges, when acting within their jurisdiction, cannot be held responsible to private parties in civil actions for their judicial acts, however injurious may be those acts. Stump v. Sparkman, 435 U.S. 349, 357, 55 L.Ed.2d 331,98 S.Ct. 1099, reh'g denied, 436 U.S. 951, 56 L.Ed.2d. 795, 98 S.Ct. 2862 (1978). Applying the doctrine of judicial immunity to the instant action, Count III of plaintiff's complaint is also found to be without merit.

Since a review of the complaint filed herein does not indicate that the plaintiff has been deprived of rights secured under the U.S. Constitution by persons acting under color of state law, plaintiff has no claim cognizable under Section 1983.

The claims are without merit because the plaintiff cannot make a rational argument on the law or facts that would bring his claim under Section 1983. Accordingly, it is the order of this court that the action is dismissed pursuant to 28 U.S.C. Section 1915(d) as without merit.

IT IS SO ORDERED this 21st day of August, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ELDON LOWELL YOCUM Plaintiff, v. MICHAEL M. MIHM, et al, Defendants.	)	87-C-578-B

ORDER

Plaintiff's motion to proceed in forma pauperis was granted on July 22, 1986, and his civil rights complaint was thereafter filed.

The complaint is now subject to review pursuant to 28 U.S.C. Section 1915(d) to determine whether the complaint is frivolous, improper, or obviously without merit. Phillips v. Carey, 638 F.2d 207 (10th Cir. 1981). cert. denied, 450 U.S. 985, 101 S.Ct. 1524, 67 L.Ed.2d 821 (1981). A complaint is frivolous or obviously without merit if the plaintiff cannot make a rational argument on the law or the facts to support his claim. Id. at 208. See also, Bennett v. Passic, 545 F.2d. 1260 (10th Cir. 1976).

Plaintiff's complaint purports to set forth a civil rights action pursuant to 42 U.S.C. Section 1983, 15 U.S.C. Section 1 (declaring combinations in restraint of trade a felony), and 28 U.S.C. Section 2201 (declaratory judgments). However, a review of the pleadings in a light most favorable to the Plaintiff reveals a complete absence of any actionable claim.

All three counts of plaintiff's complaint are based on actions taken by one named, and several unnamed, state and federal judges. The plaintiff makes various rambling allegations concerning false statements and errors made by the several judicial defendants, apparently in the context of previous criminal proceedings involving the plaintiff. It has been settled for more than 100 years that judges of courts of general jurisdiction, when acting within their jurisdiction, cannot be held liable to private parties in civil actions as a result of their judicial acts, however injurious those acts may be. Stump v. Sparkman, 435 U.S. 349, 357, 98 S.Ct. 1099, 35 L.Ed.2d 33, reh'g denied, 436 U.S. 951, 98 S.Ct. 2862, 36 L.Ed.2d 795 (1978); Randall v. Brigham, 7 Wall. 523 (1869). Even assuming the complaint could be amended to correctly identify the unnamed judicial defendants, this doctrine of judicial immunity precludes plaintiff from stating a meritorious cause of action. The plaintiff has not, and cannot, make a rational argument on the law or these facts to support his claims. Consequently, the court finds that the action is frivolous and obviously without merit. Furthermore, the court notes that while several additional defendants are named in the style of the complaint, plaintiff has made no allegations or references in the body of the complaint concerning any of the named defendants (with the exception of Judge Michael M. Mihm).

For the above reasons, after carefully reviewing the complaint in its entirety, it is the order of this court that

the action against all of the defendants named in the complaint be dismissed. Accordingly, this action is, in all respects, dismissed with prejudice.

So Ordered this 21 day of August, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN M. WHEATLEY,

Plaintiff,

v.

TIM D. TERBUSH,

Defendant.

No. 87-C-503-B

FILED

AUG 21 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

This matter comes on for consideration of the Motion for Default Judgment by the Plaintff along with his Affidavit for Entry of Default Judgment by Clerk or Court. After due consideration of the allegations contained therein and after consideration of the court file, the Court finds that the Defendant is in default for failure to timely answer the petition and that the Plaintiff is entitled to the requested relief.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff is granted judgment in the amount of Twenty-Five Thousand Dollars ($25,000.00) on the promissory note, plus prejudgment interest at the rate of 13% from October 4, 1985 to the date of judgment, which is Six Thousand Ninety-Nine and 32/100 Dollars ($6,099.32), postjudgment interest at the rate of 13%, and costs and attorney fees if timely applied for pursuant to the Local Rules of this Court.

DATED this 20th day of August, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

C-11

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STANLEY J. SKOKAUKAS, FLOY L. SKOKAUKAS and LONNIE D. ECK, Trustee,

Plaintiff(s),

vs.

MIKE DUNNAHOO BUICK, INC., MIKE KAVANAUGH, and GENERAL MOTORS ACEPTANCE CORPORATION,

Defendant(s).

No. 86-C-1166-B

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 21st day of AUGUST, 1987.

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FRED G. LATHAM, JR.,

Plaintiff,

v.

ROBERT L. BOGGS, BILL GRANT, DAVID YOUNG, DAN SNIDER, GILBERT VALLEJO, and FIRST AUSTIN FINANCIAL, INC.,

Defendants.

No. 86-C-478-B

JUDGMENT

In accord with the Findings of Fact and Conclusions of Law awarding default judgment, costs and attorney fees entered the 21 day of August, 1987, Judgment is hereby entered in favor of the plaintiff, Fred G. Latham, Jr., and against the defendant, Dan Snider, in the amount of Two Hundred Twenty-Two Thousand Dollars ($222,000.00), attorneys fees in the amount of Thirteen Thousand Seventy-Two Dollars ($13,072.00), plus costs in the amount of Five Hundred Sixty-Two and 34/100 Dollars ($562.34), with interest thereon from this date at the rate of 6.98% per annum.

DATED this 21 day of August, 1987.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. S. NADENE GARRETT; DARRELL W. DUKE; RAMONA SUE PRICE; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	CIVIL ACTION NO. 86-C-525-B

FILED

AUG 21 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

NOW, on this 21 day of August, 1987, there came on for consideration the Motion of the United States to amend the Judgment of Foreclosure previously entered herein on February 9, 1987. The Court finds said Motion is well taken.

NOW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Judgment of Foreclosure previously entered herein on February 9, 1987, be and the same is hereby amended by deleting the words, "with appraisement," appearing in the first paragraph on page 5 of the Judgment and inserting in lieu thereof the words, "without appraisement."

UNITED STATES DISTRICT JUDGE

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Entered

AUG 21 1987

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES D. DURHAM and LYNN C. DURHAM, Plaintiffs,	)	
vs.	)	No. 85-C-507-C
THE DOW CHEMICAL COMPANY, Defendant.	)	

O R D E R

On January 14, 1987, the United States Court of Appeals for the Tenth Circuit issued its mandate regarding plaintiffs' appeal from this Court's Order of July 24, 1985, dismissing the plaintiffs' Complaint. The appellate court's mandate contained the following conclusion and directive:

> We conclude that the appeal ... is frivolous and that Dow is entitled to damages under Fed.R.App.P. 38 for the cost of the appeal, including reasonable attorney's fees .... It is further ordered that the cause ... is REMANDED with the instructions to the district court to amend its judment [sic] to include an award of damages ... in an amount to be determined by the district court. The district court shall also determine whether damages should be assessed against appellants, or against their attorney, or jointly against appellants and their attorney.

(Order and Judgment at 4). A hearing was held on April 14, 1987, in order to make the determinations required by the appellate

court. Having considered the briefs submitted, and the evidence presented in the form of exhibits and testimony, the Court is now ready to amend its prior Order.

The defendant has requested fees in the estimated[1] amounts of $7,466.50 for the appeal itself, and $4,500.00 to prepare for, travel to, and participate in the sanctions hearing. Defendant additionally seeks $221.98 for expenses, making a total damage request of $12,188.48. Plaintiffs argue that any award should not include post-appeal fees, but the Court disagrees. In view of the imprecision in calculating a figure, the Court has concluded that $10,000.00 is a reasonable damage award.

The Court must now determine whether this award is to be assessed against plaintiffs, their attorney, or both. Initially, plaintiffs' counsel argues that a sanctions award against an attorney under Rule 38 of the Federal Rules of Appellate Procedure requires a finding that the attorney acted in bad faith. He refers the Court to Herzfeld & Stern v. Blair, 769 F.2d 645 (10th Cir. 1985), in which the appellate court found that appellant's counsel had made numerous inaccurate references to the record. The court stated that "[t]hese acts have added grievously to the frivolous nature of this appeal." Id at 647. The court imposed sanctions against counsel. However, the court specifically

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[1]Defendant submitted estimates because counsel for defendant employs a variable multiplier in calculating and billing its fees.

stated that it did so pursuant to 28 U.S.C. §1927. That section does require a finding of bad faith. The Tenth Circuit Court of Appeals has never held that such a finding was necessary before sanctions under Rule 38 F.R.A.P. could be imposed, and the specific mandate to this Court does not so indicate. The Court rejects this argument.

Plaintiffs' counsel also argues that the defendant has waived its award by failing to timely file its bill of costs and request for attorney fees, in violation of Rule 39(d) F.R.A.P. and Rule 6 of the Local Court Rules. As the defendant points out, Rule 39(d) applies only to award of costs, not Rule 38 Sanctions. As for Rule 6, it may be waived by the Court pursuant to Rule 1(e) of the Local Court Rules when justice requires. Moreover, the Court does not believe that Rule 6 applies to a damage award pursuant to appellate mandate. Logically, a request for fees could not be made within 10 days, as Rule 6 requires, because an appellate court mandate is not issued for 21 days after the appellate court judgment, and a request for rehearing could delay the matter still more. Cf. Murphy v. L&J Press Corp., 577 F.2d 27 (8th Cir. 1978). The Court concludes that the award has not been waived.

It is the Order of the Court that its judgment entered on July 24, 1985 is hereby amended as follows. The defendant Dow Chemical Company is hereby awarded damages in the amount of $10,000.00.

It is the further Order of the Court that this award is assessed in the amount of $5,000.00 against the plaintiffs, James D. Durham and Lynn C. Durham, jointly and severally. The remaining $5,000.00 of the award is assessed against Kevin Abel, counsel for the plaintiffs.

IT IS SO ORDERED this 19th day of August, 1987.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 21 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

RONALD A. SPELMAN, *et al.*,

Plaintiffs,

-*vs*.-

THE F&M BANK & TRUST COMPANY, *et al.*,

Defendants.

No. 80-C-106-Bt

ORDER FOR DISMISSAL WITH PREJUDICE AS TO THE DEFENDANT PHILIP LINDSLEY

Upon proper application of the Plaintiffs, the Court Orders this action dismissed with prejudice as against the Defendant Philip (or Phillip) Lindsley for the reason that the moving Plaintiffs and the Defendant Lindsley have reached a complete settlement of all issues.

WITNESS MY HAND THIS 21 DAY OF August, 1987.

S/ THOMAS R. BRETT
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WALTER KOSTICH,

Plaintiff,

v.

CIRCLE K CORPORATION,

Defendant.

No. C-86-876-B

O R D E R

This matter comes before the Court on the motion for summary judgment of the Defendant Circle K Corporation ("Circle K"). The Court heard oral argument on the pending motion on July 9, 1987. Based upon the oral arguments of counsel and the brief and authorities filed by the parties,[1] the Court finds that the motion for summary judgment should be granted in part and denied in part.

Plaintiff's Complaint alleges claims of assault, false arrest, and malicious prosecution. During the oral arguments on the motion the Plaintiff admitted that the essential elements to support a cause of action for malicious prosecution had not been satisfied, as no charges were ever pressed by the Defendant against the Plaintiff. In view of the Plaintiff's confession

[1] Plaintiff's response brief in opposition to the Defendant's Motion for Summary Judgment does not comply with the re-requirements of Local Rule 14 of the Northern District. The Court, while entitled to deem the Defendant's motion confessed under Rule 14(a), has liberally construed the Plaintiff's response in the interest of justice. Counsel for Plaintiff is directed to become familiar with and adhere to the rules of the Court in all future filings.

with respect to the malicious prosecution claim, the Court finds that summary judgment is proper.

Next, the Defendant urges that summary judgment is appropriate on the assault claim as the actions of the Defendant's store manager were not committed during the course and scope of his employment with the Defendant corporation. The Defendant alleges that the actions of the store manager were done for his own personal reasons, motives and benefit, and not in furtherance of any business of the Defendant Circle K Corporation. In support of this proposition, the Defendant cites the deposition of the Plaintiff regarding his knowledge of the store manager's motivation and purpose for doing the acts complained of.

> Q. Do you have any knowledge as to why the manager acted the way he did that day?
>
> A. Yes. I think he was mad at the Circle K. Like he said, and he made the statement there in front of his witnesses, when his language--and said this was his last day anyway so he didn't care what happened. (Deposition of Plaintiff, pp. 55-56).

The Plaintiff responds by affidavit which states that during the confrontation which is the subject of the instant lawsuit the person identified himself as the manager of Circle K and never stated he was acting in any other way than in his capacity as manager of the business. The Court finds in light of the evidence now before the Court that issues remain as to whether or not the store manager was acting within the scope of his employment at the time of the incident.

Summary judgment must be denied if a genuine issue of material fact is presented to the trial court. Exnicious v. United States, 563 F.2d 418, 425 (10th Cir. 1977). In making this determination, the Court must view the evidence in the light most favorable to the party against whom judgment is sought. National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778, 784 (10th Cir. 1977). Factual inferences tending to show triable issues must be resolved in favor of the existence of those issues. Luckett v. Bethlehem Steel Corp., 618 F.2d 1373, 1377 (10th Cir. 1980). Based upon the evidence before the Court, the Plaintiff has raised facts which could infer the existence of a master-servant relationship.

The Defendant also seeks summary judgment on the false arrest claim, asserting that the Plaintiff cannot recover for false arrest because he consented to and caused his own arrest.

"False imprisonment" or "false arrest" is the unlawful restraint of an individual's personal liberty or freedom of locomotion against his will. S. H. Kress & Co. v. Bradshaw, 99 P.2d 508, 511 (Okla. 1940), and Houghton v. Foremost Financial Services Corp., 724 F.2d 112, 116 (10th Cir. 1983). It is clear from the deposition testimony provided by both the Defendant and the Plaintiff that the Plaintiff has no claim for false arrest or false imprisonment from the time he entered the Defendant's place of business up until the time that he was actually arrested by the police. Plaintiff's deposition states:

A. He (the manager) said, 'You're going to leave or I'm going to call the police and have you arrested.'

Q. What did you say?

A. I said, 'You go ahead and call the police. I have done nothing wrong and I've done nothing to be arrested for.' And he said, 'Well, I'm going to have you arrested.' I said, 'You call the police and we'll get this thing settled.' (Deposition of Plaintiff, pp. 16-17).

It is clear from the Plaintiff's own testimony that he was not held within the store before the arrival of police against his will. Consent is a valid defense to an action for false imprisonment or false arrest. See, Harper, James and Gray, The Law of Torts, Volume 1, §3.10. As succinctly stated by Professor Prosser, moral pressure, as where the plaintiff remains with the defendant to clear himself of suspicion or threats for the future as, for example, to call the police and have the plaintiff arrested, is not enough to state a claim for false arrest or false imprisonment. Prosser, Law of Torts §11 p. 45 (West 1971). See also, Hunter v. Laurent, 104 So. 747 (La. 1925), and Safeway Stores, Inc. v. Amburn, 388 S.W.2d 443 (Tex.Civ.App. 1965).

The uncontroverted showing that the Plaintiff consented to remain in the Defendant's store until the arrival of police precludes a claim of false imprisonment for that time period. However, the Court finds that issues of fact remain as to the false arrest claim after the police had arrived and the Plaintiff was detained. Issues remain as to whether or not the Plaintiff's arrest was in fact lawful. Plaintiff affirmatively states by affidavit that he did not consent to his arrest. See, Affidavit

of Kostich, Exhibit A to Plaintiff's Brief. The Defendant urges that the store manager was within his rights to effectuate a lawful arrest based upon the Jenks City Code, Section 14-5-8. The Court finds the unverified copy of the Jenks City Code insufficient to show that the store manager was entitled to make a lawful citizen's arrest of the Plaintiff. Under the previously articulated standard for a motion for summary judgment, the Court finds that issues of material fact remain as to the Defendant's contention that the restraint of the Plaintiff was lawful and therefore privileged. While clear that the Defendant cannot be held liable for the time period before the actual arrest, based upon the Plaintiff's consent, an issue of liability remains as to the period after the actual arrest and the Plaintiff's subsequent release. As stated in S.H. Kress & Co. v. Bradshaw, supra, it is a well- established principle of law that all who by direct act or indirect procurement, personally participate in, or proximately cause the false imprisonment or unlawful detention of another, are liable therefor.

For the reasons set forth above, the Defendant's motion for summary judgment on the malicious prosecution claim is hereby granted. The Defendant's motion regarding the false arrest claim is granted in part and denied in part, and the Defendant's motion for summary judgment on the assault claim is denied.

IT IS SO ORDERED, this 21 day of August, 1987.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CRAIG SMITH,	)	
	)	
	)	
Defendant.	)	CIVIL ACTION NO. 87-C-452-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Nancy Nesbitt Blevins, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action with prejudice.

Dated this 21st day of August, 1987.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of August, 1987, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Dean Smith, 8906 E. Skelly Drive, Tulsa, Oklahoma 74129.

Nancy Nesbitt Blevins
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES PHILLIP ARNOLD, Plaintiff, v. BECKER CORPORATION, Defendant.	)	CIVIL ACTION NO. 87-C-424-B

ORDER

The parties appearing by and through their respective counsel, and having agreed to the resolution of this case as follows, IT IS ORDERED:

1. The Court has jurisdiction of the parties to and the subject matter of this action. Venue is proper pursuant to 28 U.S.C. §§ 1391(a) and (c).

2. Plaintiff's claim for relief for declaratory judgment by the Court regarding the validity of the covenant not to compete which is contained within the Agreement which is attached to plaintiff's Amended Complaint, filed herein on June 22, 1987, is dismissed with prejudice, and the Court makes no ruling regarding that issue.

3. Defendant Becker Corporation is hereby permanently enjoined from enforcing or attempting to enforce, either directly or indirectly, in any state or federal court in this State or in any other of these United States, said covenant not to compete against plaintiff James Phillip Arnold or Ellsworth Motor Freight Lines. Defendant is further permanently enjoined from using or relying on said covenant in any future action or proceedings which it might institute against plaintiff or Ellsworth Motor Freight Lines based upon some action or actions of such parties unrelated to said covenant.

4. This Order is without prejudice to the rights of defendant to pursue its legal remedies against plaintiff for causes of action unrelated to the subject covenant not to compete.

5. Each of the parties shall be responsible for his or its own costs, expenses, and attorneys' fees.

DATED this 20 day of August, 1987.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

David E. Strecker
Katie J. Colopy
CONNER & WINTER
2400 First National Tower
Tulsa, OK. 74103

By Katie J. Colopy
Attorneys for plaintiff

Gary L. Ayers
FOULSTON, SIEFKIN, POWERS & EBERHARDT
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Wichita, Kansas 67202

-and-

Mary J. Rounds
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

By
Attorneys for defendant

SCW/jch

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KIMBERLY KLEIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-576-E
	)	
HERMAN KREBS,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

NOW on this 20th day of August, 1987, upon the written application of the Plaintiff, Kimberly Klein, and the Defendant, Herman Krebs, for a Dismissal with Prejudice as to all claims and causes of action involved in the Complaint of Klein v. Krebs, and the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint, and have requested the Court to Dismiss said Complaint with prejudice, to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of said Plaintiff.

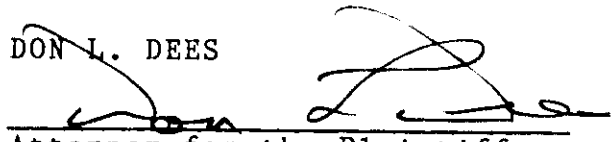
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that all claims and causes of action of the Plaintiff, Kimberly Klein, against the Defendant, Herman Krebs, be and the same hereby are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OKLAHOMA

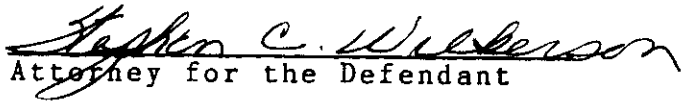
APPROVALS:

DON L. DEES



Attorney for the Plaintiff

STEPHEN C. WILKERSON



Attorney for the Defendant

DWG/sl
8-10-87

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ORA MAE JIMISON,

Plaintiff,

vs.

GRANDY'S, INC., a California corporation, and MINNEAPOLIS TEACHER RETIREMENT FUND ASSOCIATION, a Minnesota corporation,

Defendants.

Case No. 85-C-975-E

ORDER OF DISMISSAL WITH PREJUDICE

Comes on the application of plaintiff for dismissal with prejudice, and the Court finds that the same should be granted. Furthermore, defendant has no objections.

IT IS, THEREFORE, ORDERED that plaintiff's above styled action is dismissed with prejudice to refiling of the same.

Dated this 20th day of Aug., 1987.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES
DISTRICT COURT

APPROVED:

BILL BARKSDALE,
Attorney for Plaintiff

ROGERS, HONN AND ASSOCIATES,
Attorneys for Defendant,

By:
DOUGLAS W. GOLDEN

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

WESTWIND ENERGY CORPORATION, a Texas corporation; SPLENDORA ENERGY CORPORATION, a Texas corporation; and ARRIOLA ENERGY CORPORATION, a Texas corporation, Plaintiffs, vs. EAGLE OIL COMPANY, et al., Defendants, vs. JEFFREY E. CARTER, an individual; J. E. CARTER ENERGY & DEVELOPMENT CORPORATION, a Texas corporation; and W. AUSTIN BARSALOU, and individual, Third Party Defendants.	85-C-934-E

O R D E R

Before the Court is a Motion by the Defendants to dismiss Plaintiffs' Complaint for failure of Plaintiffs to give depositions.

The Defendants allege that they noticed each Plaintiff that its deposition would be taken on June 1, 1987 at 9:00 a.m., in Tulsa, Oklahoma. The Defendants allege that the Notice was duly served on each Plaintiff by certified mail, and that Notice was served on the Plaintiffs' former counsel, Joseph R. Farris of Feldman, Hall, Franden, Woodard & Farris.

On June 11, 1987, the Defendants filed their Motion to Dismiss Plaintiff's Complaint for failure of Plaintiffs to give depositions, and none of the Plaintiffs has filed a memorandum in opposition to such motion, nor has an objection to such motion been filed. Pursuant to Local Rule 14(a), the Plaintiffs have confessed the matters raised by the Defendants' Motion to Dismiss.

Additionally, the Defendants have stated that each Defendant will dismiss his Counterclaim against the Plaintiffs and his Third Party Complaint against Jeffrey E. Carter, J. E. Carter Energy & Development Corporation, and W. Austin Barsalou, upon the Court dismissing the Plaintiffs' Complaint against the Defendants. None of the Third Party Defendants has objected to said dismissal.

In light of the foregoing, the Defendants, Eagle Oil Company, Larry Huff, David Eastis, and Robert Tresslar's Motion to Dismiss the Plaintiffs' Complaint With Prejudice is granted, and the Defendants' Counterclaims against the Plaintiffs are dismissed without prejudice, and the Defendants' Third Party Complaint against the Defendants, Westwind Energy Corporation, Spendora Energy Corporation and Arriola Energy Corporation, are dismissed without prejudice.

IT IS SO ORDERED this 20th day of August, 1987.

JAMES O. ELLISON
U. S. DISTRICT JUDGE

APPROVED FOR ENTRY:

Douglas L. Jackson, OBA #4583
GUNGOLL, JACKSON & COLLINS, P.C.
American Standard Life Center
North - Suite 700
Post Office Box 1549
Enid, OK 73702
(405) 234-0436

ATTORNEY FOR DEFENDANTS,
EAGLE OIL COMPANY, DAVID EASTIS,
LARRY HUFF and ROBERT TRESSLAR

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL J. MAJOR,)
)
Plaintiff,)
)
v.) No. 86-C-1083-B
)
PENNWELL PUBLISHING COMPANY,)
)
Defendant.)

J U D G M E N T

In accordance with the Findings of Fact and Conclusions of Law entered the 20th day of August, 1987, the Court enters judgment in favor of the Plaintiff, Michael J. Major, and against the Defendant, PennWell Publishing Company, on the breach of contract claim in the amount of Eight Hundred Twenty and 83/100 Dollars ($820.83), plus pre-judgment interest at the rate of 6% per annum from the date of February 1, 1986 to the date of judgment, which is $897.07, and post-judgment interest at the rate of 6.98% per annum from this date on the total sum of $897.07. Judgment is hereby entered in favor of the Defendant, PennWell Publishing Company, and against the Plaintiff, Michael J. Major, on Plaintiff's claim of intentional infliction of emotional distress. The parties are to pay their own respective court costs and attorneys fees. (Plaintiff appears pro se).

DATED this 20th day of August, 1987.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DANIEL FRANCIS CAREY,)
)
Plaintiff,)
)
vs.) No. 84-C-349-E
)
CONTINENTAL AIRLINES, INC., et al.,)
)
Defendants.)

O R D E R

This matter comes before the Court for consideration of Plaintiff's claims for false arrest, false imprisonment, abuse of process and malicious prosecution. This Court having previously granted summary judgment on Plaintiff's federal claim, this Court may no longer exercise pendent jurisdiction on Plaintiff's state law claims. Jones v. Intermountain Power Project, 794 F.2d 546 (10th Cir. 1986).

Accordingly, Plaintiff's claims for false arrest, false imprisonment, abuse of process, and malicious prosecution are hereby dismissed without prejudice.

DATED this 20th day of August, 1987.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

30

WMH/SB

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN JONES AND RONALDA JONES,)
)
Plaintiffs,)
)
vs.)
)
JOHN PATRICK AVEY,)
)
Defendant.) NO. 85-C-899-E

STIPULATION OF DISMISSAL

Come now the parties and stipulate to the dismissal of the above styled and numbered cause with prejudice.

FRASIER & FRASIER

By: _____

STEVEN R. HICKMAN
Oklahoma Bar No. 4172
1700 Southwest Boulevard
Suite 100
P. O. Box 799
Tulsa, Oklahoma 74101
Telephone: (918) 584-4724

Attorney for Plaintiffs

SECREST & HILL

By: _____

W. MICHAEL HILL
Oklahoma Bar No. 4213
1515 East 71, Suite 200
Tulsa, Oklahoma 74136
Telephone: (918) 494-5905

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DONNA KAY SMITH, Plaintiff, vs. PATRICIA ANN HOUGH, Defendant and Third Party Plaintiff, and, FERNANDO ZARAGOZA, Plaintiff, vs. PATRICIA ANN HOUGH, Defendant and Third Party Plaintiff, vs. CITY OF BROKEN ARROW and DONNA KAY SMITH, Third Party Defendants.	)	Case No. 85-C-875-E CONSOLIDATED Case No. 85-C-876-E

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW Fernando Zaragoza, plaintiff in Case No. 85-C-876-E, Patricia Ann Hough, defendant and third party plaintiff in Case No. 85-C-876-E, City of Broken Arrow, third party defendant in Case No. 85-C-876-E, and Donna Kay Smith, third party defendant in Case No. 85-C-876-E, and jointly stipulate that all issues raised in Case No. 85-C-876-E have been settled and said issues are hereby dismissed with prejudice to refiling. Fernando Zaragoza stipulates to dismissing with prejudice his causes of action against Patricia Ann Hough. Patricia Ann Hough stipulates to dismissing with prejudice her causes of action against the City of Broken Arrow and Donna Kay

Smith in Case No. 85-C-876-E. This stipulation does not include the issues raised in Case No. 85-C-875-E which has been consolidated with the case being dismissed, 85-C-876-E.

F. L. DUNN, III
Attorney for Plaintiff,
Fernando Zaragoza in Case No.
85-C-876-E

DENNIS KING
Attorney for Defendant and
Third Party Plaintiff, Patricia Ann
Hough in Case No. 85-C-876-E

MICHAEL VANDERBURG
Attorney for the City of Broken
Arrow in Case No. 85-C-876-E

PAUL BOUDREAUX and STANLEY MONROE
by Paul Boudreaux, Attorneys for
Third Party Defendant, Donna Kay
Smith in Case No. 85-C-876-E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 19 1997

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

RUTH BLAIR,

Plaintiff,

vs.

INSURANCE COMPANY OF NORTH AMERICA, a Pennsylvania insurance corporation,

Defendant.

No. 84-C-766-E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Come now the parties and show to the Court that all issues have been compromised and settled herein and the parties jointly stipulate and agree that plaintiff's cause be and the same is dismissed with prejudice and the parties to bear their respective costs.

BEST, SHARP, THOMAS, GLASS & ATKINSON

By _____
Michael P. Atkinson
O.B.A. #374
ParkCentre - Suite 1500
525 South Main
Tulsa, OK 74103
(918) 582-8877

ATTORNEYS FOR PLAINTIFF

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By _____
Wm. S. Hall
O.B.A. #3739
ParkCentre - Suite 1400
525 South Main
Tulsa, OK 74103-4409
(918) 583-7129

ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ESTHER FINGER, A. L. FINGER, BOB J. STEWART, a/k/a ROBERT J. STEWART and DAVID W. BARG,

Plaintiffs,

vs.

JOSEPH R. ZIEGLER and JOYCE ZIEGLER,

Defendants.

FILED

AUG 19 1987

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

No. 87-C-608-B

Notice of DISMISSAL WITHOUT PREJUDICE

COME NOW the Plaintiffs and dismiss the above-styled action without prejudice.

Of Counsel:
GABLE & GOTWALS
Richard W. Gable
Patrick O. Waddel
Gene C. Buzzard
James W. Rusher
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

UTICA NATIONAL BANK & TRUST CO., a national banking association, Plaintiff, vs. CALVIN RANSOM, et al., Defendants.	)	Case No. 85-C-537-C

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that Plaintiff's claims against TIMOTHY F. RAZZARI and BILLIE RAZZARI asserted herein are hereby dismissed with prejudice, each party to bear their costs incurred herein.

///

///

///

///

///

This dismissal shall have no effect on any other claims made against any other Defendant herein.

DATED: ~~July~~ May 17, 1987

Charles V. Wheeler
GABLE & GOTWALS
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEYS FOR PLAINTIFF
UTICA NATIONAL BANK & TRUST CO.

DATED: May 3 ~~July~~ ___, 1987

Michael J. Noland
KAHN, SOARES & CONWAY
221 N. Douty Street
P. O. Box 1376
Hanford, California 93232
(209) 584-3337

ATTORNEYS FOR DEFENDANTS,
TIMOTHY F. RAZZARI AND
BILLIE RAZZARI

dwgb25

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AMERIQUEST ENERGY CORPORATION, and B. P. STAUSS,	)	
Plaintiffs,	)	
vs.	)	Case No. 86-C-506-E
CAL-DENVER RESOURCES, LTD., CAL-DENVER OIL AND MINERALS CORP., and P. RANDY REIFEL,	)	
Defendants.	)	

DISMISSAL

COMES NOW the Plaintiffs, AMERIQUEST ENERGY CORPORATION and B. P. STAUSS, and hereby dismiss the above cause with prejudice.

Dated this 18th day of August, 1987.

THOMAS B. BAINES, OBA #10022
HOFFMAN, FISCHER & BAINES
320 South Boston, Suite 1000
Tulsa, Oklahoma 74103
(918) 585-5997

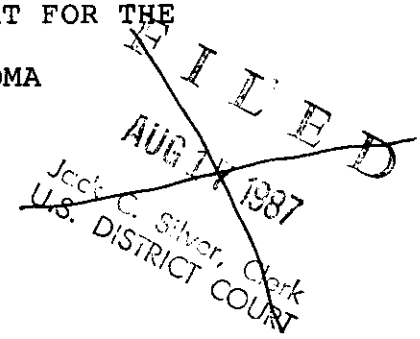
CERTIFICATE OF MAILING

I, Thomas B. Baines, do hereby certify that on this 18th day of August, 1987, a true and correct copy of the above and foregoing Dismissal was mailed to Thomas K. Moran, Attorney for Defendants, H.C. 61, Box 157, Tahlequah, Oklahoma, 74464, with correct postage fully prepaid thereon.

THOMAS B. BAINES

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA



FOREMOST FINANCIAL SERVICES CORPORATION, a Delaware corporation,	)	
Plaintiff,	)	
v.	)	Case No. 87-C-349-E
IVAN W. NIPPS AND ROXIE M. NIPPS,	)	
Defendants.	)	

FILED
AUG 18 1987
Jack C. Silver, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

This matter comes on before the Court on the Motion for Default Judgment filed by Foremost Financial Services Corporation ("Foremost") against the Defendants Ivan W. Nipps and Roxie M. Nipps ("Defendants"). The Court finds as follows:

1. The Complaint was filed on May 11, 1987.

2. For the Defendant Ivan W. Nipps, a Return of Service was filed on June 18, 1987, identifying that said Defendant was served on June 11, 1987.

3. For the Defendant Roxie M. Nipps, a Return of Service was filed on June 18, 1987, identifying that said Defendant was served on June 11, 1987.

4. That the Defendants have failed and refused to Answer or otherwise respond to the Complaint.

5. Foremost was at all times hereinafter mentioned, and now is, a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business in the State of Michigan.

6

6. Defendants were at all times hereinafter mentioned a citizen of the State of Oklahoma, and reside at Route 3, Box 198B, Colcord, Oklahoma.

7. On or about the 1st day of January, 1985, Defendants executed a Retail Installment Contract - Security Agreement in writing and agreed to pay to the order of Plaintiff the principal sum of $21,380.00, with interest thereon at the rate of 14.50% per annum until paid, said sum to be paid in 180 equal monthly installments of $291.94. A copy of said contract is attached to the Complaint and marked Exhibit "A".

8. As part of said Retail Installment Contract - Security Agreement, Defendants granted to Plaintiff a security interest in certain personalty (hereinafter "Collateral") more particularly described as: 1985 Castle Mobile Home, Model, Princess II, Size, 14 X 80, Serial #, CCA8447438827, including a washer and dryer.

9. The security interest created by the contract referred to as Exhibit "A" above was perfected according to the laws of this state and a copy of the duly filed Financing Statement is attached to the Complaint and marked as Exhibit "B". Plaintiff is the owner and holder of a first, paramount and superior security interest in and to said Collateral.

10. Plaintiff has purchased, for good and valuable consideration, and is the holder of the contract attached to the Complaint as Exhibit "A"; and, is, therefore, the secured party under the Financing Statement attached to the Complaint as

Exhibit "B", with all rights associated therewith.

11. Defendants defaulted on the aforementioned contract by failing to make the monthly payments. By reason of Defendants' default, the maturity of said Note has been accelerated according to the terms of the contract and Plaintiff has declared all sums immediately due and payable. Plaintiff is therefore entitled to the immediate possession of the aforesaid Collateral so that it may exercise its rights pursuant to the Retail Installment Contract - Security Agreement, and the Oklahoma Uniform Commercial Code.

12. Giving credit for all payments made, Defendants are presently indebted to Plaintiff in the principal amount of $27,179.36, together with interest at the rate of 14.50% per annum from and after the 1st day of January, 1986, until paid.

13. The Defendants are in actual or constructive possession of the aforesaid Collateral, which possession is inferior and subject to the aforesaid security interest of the Plaintiff. Although Plaintiff has demanded, Defendants have failed, neglected, and refused to deliver or relinquish possession of the aforesaid Collateral to Plaintiff.

For good cause shown,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

A. That Foremost have judgment by default against the Defendants; and, further that said Defendants are hereby directed to return possession of and delivery of the aforesaid Collateral to Foremost.

B. That, in the event possession of the aforesaid Collateral cannot be delivered to Foremost, Foremost have judgment against the Defendants in the amount of $27,179.36, together with interest at the rate of 14.5% per annum from the 1st day of January, 1986, until paid.

C. That Foremost has a first, valid, paramount and superior security interest covering the aforesaid Collateral.

D. That after possession of the aforesaid Collateral has been delivered to Foremost, Foremost may pursue all available rights pursuant to 12 O.S. 1981, § 1585 and the Uniform Commercial Code.

E. That Foremost have execution for enforcement of this judgment.

F. The Plaintiff ~~is~~ WILL BE awarded REASONABLE attorney fees ~~in the sum of~~ UPON PROPER APPLICATION. _____, and all costs herein.

DATED this 17TH day of August, 1987.

JUDGE OF THE DISTRICT COURT

APPROVED:

Thomas E. Prince, OBA #7317
FERGUSON & PRINCE
641 N.E. 39th Street
Oklahoma City, Oklahoma 73105
(405) 424-0047

ATTORNEYS FOR PLAINTIFF
FOREMOST FINANCIAL SERVICES
CORPORATION

082:tkhd2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WARREN AMERICAN OIL COMPANY, a Texas corporation, VENUCOT RESOURCES, INC., a Texas corporation, and EGJ OIL INTERESTS, INC., a Texas corporation,	)	
Plaintiffs,	)	
v.	)	Case No. 87-C-527 B
ARKLA, INC., d/b/a ARKANSAS LOUISIANA GAS COMPANY,	)	
Defendant.	)	

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff Venucot Resources, Inc. and dismisses without prejudice its action against Defendant Arkla, Inc. d/b/a Arkansas Louisiana Gas Company.

Respectfully submitted,

HOUSTON AND KLEIN, INC.

By: _____

Ira L. Edwards, Jr. - 2637
David W. Wulfers - 9926
320 S. Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131

ATTORNEYS FOR PLAINTIFFS

61990115.dvr

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the above and foregoing was served upon the following counsel of record, at the address indicated, by first class mail, postage prepaid, on the 17th day of August, 1987.

Richard A. Paschal
Thomas M. Ladner
Robert G. Kern
Hall, Estill, Hardwick, Gable,
Golden & Nelson
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

William D. Curlee
Lytle, Soule, Curlee, Harrington,
Chandler & VanDyke
2210 1st National Center
Oklahoma City, Oklahoma 73102

David W. Wulfers

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

QUIKTRIP CORPORATION, Plaintiff, v. AKHTAR PERVAIZ and NAJEEBA PERVAIZ Defendants	)	Civil Action No. 87-C-450E

CONSENT DECREE

The parties have advised the Court that they have agreed to the following terms of judgment in this action:

1. The parties agree that this Court has jurisdiction over the subject matter of this controversy, and venue is proper with this Court.

2. Defendants acknowledges that the Plaintiff's following registered marks are good, valid, and subsisting and are the exclusive property of QUIKTRIP CORPORATION:

No. 1,016,020	QUIK-TRIP	Registered 7/15/75
No. 1,075,746	QUIKTRIP	Registered 10/18/77
No. 1,094,059	QT	Registered 6/20/78

3. Defendants acknowledge that the marks "QUIK-PAK" and "QP" are confusingly similar to Plaintiff's registered service marks.

4. Defendants are hereby permanently enjoined from any and all further use of the marks "QUIK-PAK" and "QP" and any other mark confusingly similar to Plaintiff's registered marks "QUIKTRIP" and "QT".

5. The defendants, AKHTAR PERVAIZ and NAJEEBA PERVAIZ, shall, within sixty (60) days of the entry of this Decree, cease using QUIK-PAK and QP or any mark phonetically or visually equivalent or otherwise confusingly similar to Plaintiff's marks.

6. Defendants shall within sixty (60) days of the entry of this Decree remove all signs and destroy all printed material or other tangible items having the expressions QUIK-PAK or QP thereon or any other expression confusingly similar to Plaintiff's marks.

7. Defendants shall, within ten (10) days after the entrance of this Decree, serve upon Plaintiff's counsel drawings or photographs of Defendants' proposed new signs showing the mark or marks which will be utilized at Defendants' facilities, for the approval of Plaintiff. The new mark or marks selected by the Defendants shall not employ the terms QUIK-PAK or QP or any other term confusingly similar to Plaintiff's registered marks.

8 This Judgment shall constitute the Courts' Writ of Injunction. By agreement, the Defendant's attorney shall accept receipt of this service as service on his clients.

9. Each party shall bear its own costs and attorneys' fees of this action.

By the Court

S/ JAMES O. ELLISON

Honorable Judge James Ellison
United States District Judge

8-17-87
Date

APPROVED AS TO FORM BY:

HEAD & JOHNSON
228 West 17th Place
Tulsa, Oklahoma 74119

Paul H. Johnson
Attorneys for Plaintiff

RICHARD RAVITS
52 N. Delaware
Tulsa, Oklahoma

Richard Ravits
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TEXACO INC., a Delaware corporation,

Plaintiff,

vs.

CARL N. COOPER, an individual, and RECOVERY RESOURCES CORPORATION, a Colorado corporation,

Defendants.

Case No. 87-C-177-C

FILED

AUG 18 1987

Jack C. Silver, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

NOW comes on before the Court the Motion for Default Judgment ("Motion") and Memorandum in support thereof filed herein by Texaco Inc. on July 1, 1987 against defendant, Carl N. Cooper ("Cooper"). The Court notes that plaintiff, Texaco Inc., is represented by James D. Hurley and its local counsel, Gable & Gotwals, Inc. by Robert S. Glass, and defendant Cooper has failed to answer or otherwise plead herein and is in default of these proceedings.

The Court makes the following FINDINGS upon a review of the record herein:

1. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. §1332, and venue is properly laid in the Northern District of Oklahoma pursuant to 28 U.S.C. §1391. This Court has in personam jurisdiction over Cooper pursuant to 12 Okla.Stat. §2001 et seq. (1984).

2. Texaco Inc. filed its Complaint herein on March 13, 1987. Service of Process upon Cooper was obtained on March 17, 1987, including service of a copy of the Complaint and Application for Order of Delivery of Property, Notice of Application for

34.

Order of Delivery of Property, and Summons filed herein. Texaco Inc. has complied with the service requirements of Rule 4(c), Federal Rules of Civil Procedure.

3. Cooper has failed to answer or otherwise plead herein within the time provided pursuant to Rule 12(a), Federal Rules of Civil Procedure, and 12 Okla.Stat. §1571 et seq. (1984), and the time for answering or otherwise pleading herein has not been extended by this Court.

4. By virtue of Cooper's failure to answer or appear herein, Texaco Inc. is entitled to default judgment against Cooper pursuant to Rule 55, Federal Rules of Civil Procedure.

5. On July 1, 1987, pursuant to request by Texaco Inc., the Court Clerk for the United States District Court, Northern District of Oklahoma, entered default against Cooper on the Court's docket pursuant to Rule 55(a), Federal Rules of Civil Procedure.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by this Court, by virtue of the findings hereinabove set forth, that the Motion for Default Judgment of Texaco Inc. should be and is hereby granted, pursuant to Rule 55(b)(2), Federal Rules of Civil Procedure, and 12 Okla.Stat. §1571 et seq. (1981), and that Texaco Inc. is entitled to judgment against Cooper as follows:

a. That the Stock Option is hereby declared to be valid and enforceable as against Cooper;

b. That Cooper is hereby ordered to specifically perform under the terms of the Stock Option by delivery to Texaco Inc. of a duly endorsed stock certificate representing seventy-five percent (75%) of the capital stock in Atoka Gas Gathering System,

Inc. upon tender by Texaco Inc. of the consideration provided in the Stock Option;

c. That Cooper is hereby permanently enjoined from transferring or otherwise attempting to transfer stock in Atoka Gas Gathering System, Inc. which is subject to the Stock Option except in accordance with the terms thereof;

d. That the judgment awarded in favor of Texaco Inc. herein against Cooper shall be subject to any rights or claims which defendant Recovery Resources Corporation may have previously acquired from Cooper; provided, however, that Texaco Inc. shall have the right to challenge any such rights or claims asserted by defendant Recovery Resources Corporation, including said defendant's standing to assert such rights or claims in this action.

e. That Texaco Inc. shall be awarded its costs incurred in this action against Cooper, including a reasonable attorneys' fee of $500.00; and

DATED this 18th day of August 1987.

HONORABLE H. DALE COOK, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:

James D. Hurley, Counsel for Texaco Inc.

J. Douglas Mann, Counsel for Recovery Resources Corporation

JDH:lbs 2/3

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JAMES L. STEVENS,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 86-C-945-E

ORDER OF DISMISSAL

Now on this 17th day of August, 1987, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, James L. Stevens, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CITIZENS BANK OF TULSA, a State Banking Corporation, Plaintiff, v. FLOYD O. HICKS and DENNIS E. HICKS, Defendants.	)	Case No. 87-C-512 B

DEFAULT JUDGMENT

The Defendants, Floyd O. Hicks and Dennis E. Hicks, have been served with process. They have failed to appear and answer the Plaintiff's Complaint filed herein. The default of Defendants, Floyd O. Hicks and Dennis E. Hicks, has been entered. It appears from the Affidavit in Support of Entry of Judgment of Default that the Plaintiff is entitled to judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover from Defendant, Floyd O. Hicks, the sum of $40,145.29, plus interest accrued and accruing from June 16, 1987 at the rate of $13.02 per day until judgment, plus interest accruing thereafter at the statutory rate of interest until paid, reasonable attorneys' fees to be set upon application, and the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff recover from Defendant, Dennis E. Hicks, the sum of $40,145.29, plus interest accrued and accruing from June 16, 1987 at the rate of $13.02 per day until judgment, plus interest accruing

thereafter at the statutory rate of interest until paid, reasonable attorneys' fees to be set upon application, and the costs of this action.

ORDERED this 17 day of August 1987.

S/ THOMAS R. BRETT

JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN E. LEACH, JR. Defendant.	)	CIVIL ACTION NO. 86-C-698-C

DEFAULT JUDGMENT

This matter comes on for consideration this 14 day of August, 1987, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, John E. Leach, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, John E. Leach, Jr., was served with Summons and Complaint on September 8, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, John E. Leach, Jr., in the amount of $1,702.00, plus accrued interest of $267.83 as of February 16, 1986 plus interest thereafter at the rate of 9 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.98 percent per annum until paid.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

PB/mp

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Phyllis Madison, as mother and next friend of Terry Wayne Boner, a minor,	)	
Plaintiff,	)	
vs.	)	NO. 85-C-926-E
Marlin Firearms Company, et al.,	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon Joint Application by the parties, and for good cause shown, the Court finds that the above styled and numbered case should be dismissed with prejudice to the refiling of any future action.

IT IS SO ORDERED this 17th day of August, 1987.

S/ JAMES O. ELLISON

JAMES O. ELLISON,
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JERRY ENNIS, JAMES ORWIG AND PAUL MOORE,	)	
Plaintiffs,	)	
vs.	)	No. 83-C-356-E
EDWARD TURLINGTON, et al.,	)	
Defendants,	)	
and	)	
EAGLE FAB, INC.,	)	
Third Party Defendant.	)	

JUDGMENT

This matter came on before the Court for a conference hearing on the 17th day of April, 1985. Upon consideration of the plaintiffs' oral motion for judgment and for good cause shown, it is hereby Ordered, Adjudged and Decreed that the plaintiff, Jerry Ennis, be granted judgment against the defendant Edward Turlington, in the amount of $6,667.00 plus interest at the rate allowed by Title 28 U.S.C. Section 1961.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, James Orwig, be granted judgment against the defendant Edward Turlington, in the amount of $6,667.00 plus interest at the rate allowed by Title 28 U.S.C. Section 1961.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Paul Moore, be granted judgment against the defendant, Edward Turlington, in the amount of $6,667.00 plus interest at the rate allowed by Title 28 U.S.C. Section 1961.

IT IS SO ORDERED this 17th day of August, 1987.

S/ JAMES O. ELLISON
JAMES O. ELLISON
JUDGE OF THE UNITED STATES
DISTRICT COURT

APPROVED:

Steven M. Harris
William P. McGinnies
P.O. Box 1679
Tulsa, OK 74127

M. D. Selingquest
for Ronald B. Stockwell
600 First National Building
Miami, OK 74354
as per telephone conversation
of 8-13-87.

Benjamin P. Abney
CHAPEL, WILKINSON,
RIGGS & ABNEY
502 West Sixth Street
Tulsa, OK 74119-1010

21-5/ras

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PHYSICIANS DIGITAL RESOURCES, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. 86-C-132-E
	)	
ROBERT BODILY, STEVEN NALL and INTEGRATED HEALTH SYSTEMS, INC.,	)	
	)	
Defendants.	)	

JOINT STIPULATION OF DISMISSAL

COME NOW the parties, and hereby jointly stipulate and agree that Plaintiff's Petition and all causes of action contained therein, and Defendants' Cross-Petition and all counts contained therein, are Dismissed with Prejudice, with each party to bear its own attorney fees and costs.

STEPHEN R. CLARK, Attorney for PHYSICIANS DIGITAL RESOURCES, INC.

PHYSICIANS DIGITAL RESOURCES, INC.,

By: **JOSEPH E. LEVY**, Chairman

LUANNA HAMILL, Attorney for ROBERT BODILY

ROBERT BODILY

JAMES E. GREEN, Attorney for STEVEN NALL and INTEGRATED HEALTH SERVICES, INC.

STEVEN NALL

INTEGRATED HEALTH SERVICES, INC.

By:

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. MICHAEL D. JOHNSON; KIM E. JOHNSON; COOPER MANUFACTURING CORPORATION; SERVICE COLLECTION ASSOCIATION, INC.; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 87-C-106-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17th day of Aug, 1987. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Doris L. Fransein, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, Service Collection Association, Inc., appears not, having previously filed its Disclaimer; and the Defendants, Michael D. Johnson, Kim E. Johnson, and Cooper Manufacturing Corporation, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Michael D. Johnson, acknowledged receipt of Summons and Complaint on February 26,

1987; that Defendant, Kim E. Johnson, was served with Summons and Complaint on April 1, 1987; that Defendant, Cooper Manufacturing Corporation, acknowledged receipt of Summons and Complaint on February 24, 1987; that Defendant, Service Collection Association, Inc., acknowledged receipt of Summons, Complaint, and Amendment to Complaint on July 15, 1987; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 13, 1987; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on February 17, 1987.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers herein on March 9, 1987; that the Defendant, Service Collection Association, Inc., filed its Disclaimer herein on July 20, 1987; and that the Defendants, Michael D. Johnson, Kim E. Johnson, Cooper Manufacturing Corporation, have failed to answer and their default has been entered by the Clerk of this Court on June 17, 1987.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Nine (9) Block Five (5), CARBONDALE THIRD ADDITION, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on September 6, 1985, the Defendants, Michael D. Johnson and Kim E. Johnson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, their mortgage note in the amount of $35,000.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Michael D. Johnson and Kim E. Johnson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, a mortgage dated September 6, 1985, covering the above-described property. Said mortgage was recorded on September 9, 1985, in Book 4890, Page 1100, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Michael D. Johnson and Kim E. Johnson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Michael D. Johnson and Kim E. Johnson, are indebted to the Plaintiff in the principal sum of $34,993.56, plus interest at the rate of eleven and one-half percent (11.5%) per annum from February 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County,

Oklahoma, claim no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Cooper Manufacturing Corporation, is in default and has no right, title, or interest in the subject real property.

The Court further finds that the Defendant, Service Collection Association, Inc., disclaims any interest in the property which is the subject of this proceeding.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Michael D. Johnson and Kim E. Johnson, in the principal sum of $34,993.56, plus interest at the rate of eleven and one-half percent per annum from February 1, 1986 until judgment, plus interest thereafter at the current legal rate of 6.98 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Cooper Manufacturing Corporation, Service Collection Association, Inc., and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Michael D. Johnson and Kim E. Johnson, to satisfy the money judgment of the Plaintiff herein,

an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

DORIS L. FRANSEIN
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

PB/css

87-01431

Floyd Ray Gibson
Rt. 1, Box 152
Delaware
Oklahoma 74027

Nowata County Treasurer
County Courthouse
Nowata, Oklahoma 74048

Joe Moss
8724 E. 91st Place
Tulsa
Oklahoma 74133

Nowata County Sheriff
County Courthouse
Nowata, Oklahoma 74048

Farmers Home Adm.
123 South Ash
Nowata
Oklahoma 74048

Lonnie D. Eck
1508 S. Carson
Tulsa, OK 74119

Federal Land Bank
P. O. Box 865
Vinita, Oklahoma 74301

Federal Land Bank
c/o Russell Peterson
107 West Commercial
Broken Arrow
Oklahoma 74012

Hematology-Oncology Assoc.
6465 S. Yale, Suite 923
Tulsa
Oklahoma 74136

St. Francis Hospital
6161 South Yale
Tulsa, Oklahoma 74136

St. Francis Hospital
c/o Service Collection Assn
6465 S. Yale, Suite 210
Tulsa, Ok. 74136

Surgical Associates Inc
6465 S. Yale, Suite 915
Tulsa
Oklahoma 74136-1910

United States Attorney
Room 3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103

FILED

MAY 28 1987

DOROTHY A. EVANS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

3

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. WELCH LIVESTOCK EXCHANGE, a/k/a WELCH SALE BARN, LARRY DAVIS, AND LEON McCOIN, Defendants.	)	CIVIL ACTION NO. 87-C-545-B

Notice of DISMISSAL WITH PREJUDICE

COMES NOW the ~~Defendant~~ Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and hereby dismisses with prejudice its First and Second Claims for Relief in its Complaint filed July 9, 1987, as against Defendants, Welch Livestock Exchange, a/k/a Welch Sale Barn, and Larry Davis only. This dismissal shall not affect in any manner whatsoever Plaintiff's Third Claim for Relief against the Defendant, Leon McCoin.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

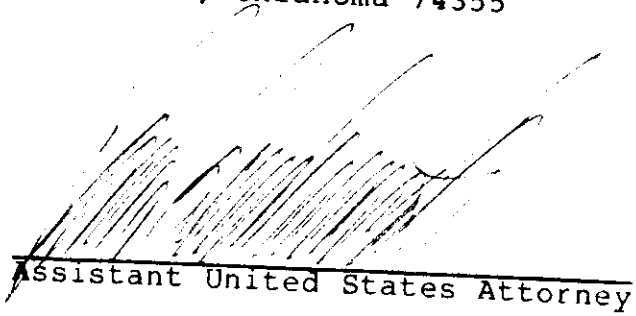
CERTIFICATE OF SERVICE

This is to certify that on the 17th day of August, 1987, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Robert G. Haney, Esquire
25 East Central
Miami, Oklahoma 74354

J. Duke Logan, Esquire
P.O. Box 558
Vinita, Oklahoma 74301

Dennis J. Watson, Esquire
P.O. Box 1168
Miami, Oklahoma 74355



Assistant United States Attorney